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The question as to how far punctuation may be considered in construing statutes, recently came up for discussion before the New York Court of Appeals in Tyrell v. City of New York. The statute in question was in reference to the salaries of men employed in the street cleaning department of that city, the wording being as follows: "Of section foremen, $1,000 each; of the assistant stable foremen, $900 each; of the hostlers, $720 each, and extra pay for work on Sundays." The plaintiff, who had been a section foreman, performed certain work on Sundays for which he claimed additional compensation, on the ground that the words "and extra pay for work on Sundays" applied to him as well as to the hostlers. The Court of Appeals held that he was not so entitled, the position of the semi-colons indicating that the extra pay referring only to the hostlers. The court said: "The punctuation of a statute is of material aid in learning the intention of the legislature. While an act of parliament is enacted as read, and the original rolls contain no marks of punctuation, a statute of this State is enacted as read and printed, so that the punctuation is a part of the act as passed. * * * The punctuation is, however, subordinate to the text, and is never allowed to control its plain meaning; but when the meaning is not plain, resort may be had to those marks which for centuries have been in common use to divide writings into sentences, and sentences into paragraphs and clauses, in order to make the author's meaning clear."

In 1895 the legislature of Missouri passed an act providing that any corporation or individual who shall enter into "any pool, trust, agreement, combination, confederation or understanding with any other corporation partnership or individual" to fix the price or premium to be paid for insuring property against loss by fire or to maintain the price when so fixed, shall be deemed guilty of a conspiracy and shall forfeit their rights to do business in the State. It appears that after this act went into effect, insurance companies doing business at St. Joseph subscribed for the rate books issued by one who had fixed rates for the underwriters' association. The agents of the companies joined a "social club," and hired an employee of the one who issued the rate books to act as secretary. Each policy written by the agent was put in an unsealed envelope, addressed to his company, and was then turned over to the secretary of the club, who compared it with the rate book, and, if the premium charged did not correspond therewith, he called upon the agent for an explanation. The members of the club had an oral agreement to abide by the rates fixed on penalty of a fine, and violators of the agreement were tried by the club. In a proceeding in the nature of *quo warranto* against such companies it was held by the Supreme Court of Missouri, in State v. Firemen's Fund Insurance Co., that the club so formed was a pool or trust within the act, and a judgment of ouster was rendered.

It was held that the act does not violate constitutional rights. It was strenuously but ineffectively contended on behalf of defendants that, having been admitted to do business in the State before the passage of the act of 1895, they acquired a vested right to do so in a manner fair and just among themselves, which vested right can not be taken away from them by the act without violating the fourteenth amendment to the constitution of the United States.

NOTES OF IMPORTANT DECISIONS.

BANKRUPTCY—PROVABLE DEBTS—PARTNER'S CLAIM FOR CONTRIBUTION—OPPOSITION TO DISCHARGE—FAILURE TO KEEP BOOKS—"CONTEMPLATION OF BANKRUPTCY."—In a proceeding entitled *In re* Carmichael, 96 Fed. Rep. 594, before the United States District Court, N. D. Iowa, W. D., the following points were decided: Where judgments against a firm, in favor of certain of its creditors, were bought up by one of the partners, who took assignments of the judgments to himself, held, that he thereby became a creditor of each of his co-partners for their respective shares of the money advanced by him in purchasing the judgments, and was entitled to prove a claim for such share against the individual estate of one of the co-partners in bankruptcy. Under Bankruptcy Act 1898, sec. 14, in order to defeat a bankrupt's petition for discharge on the ground of his having failed to keep proper books of ac-

count, it must be shown that such failure was with a fraudulent intent on the part of the bankrupt to conceal his true financial condition, and in contemplation of bankruptcy. The words "contemplation of bankruptcy," as used in the Bankruptcy Act in relation to the bankrupt's right to be discharged, mean contemplation on his part of becoming a bankrupt on his voluntary petition, or of doing an act or acts which will enable his creditors to obtain an adjudication against him, and contemplation merely of a condition of insolvency is not enough. A failure to keep proper books of account in a business in which the bankrupt had been engaged as a partner with others, but which terminated several years before the enactment of the Bankruptcy Law, is no ground of opposition to his discharge, since such failure could not have been in contemplation of bankruptcy, within the meaning of section 14 of the act, 30 Stat., 550. It is no ground for refusing a bankrupt's application for discharge that the creditor objecting thereto holds a judgment against him for willful and malicious injury to property, or a claim founded upon the fraud of the bankrupt or his misfeasance as a fiduciary. Such debts will not be affected by the discharge when granted, but they do not defeat the bankrupt's right to be discharged.

PARENT AND CHILD—LIABILITY OF PARENT FOR FUNERAL EXPENSES OF CHILD.—It is held by the Appellate Court of Indiana, in Rowe v. Raper, that funeral expenses of a deceased minor are not a charge against his estate where he leaves surviving him a father able to pay them. The court says: "The deceased left surviving him a father. The claimant was his stepmother. It is insisted by appellant that the funeral expenses, which are the foundation of the claim, are not a charge against the estate. This position is supported by authorities. From the many authorities holding that it is the duty of the parent to provide for the necessaries of life of his minor children, we cite the following: Kinsey v. State, 98 Ind. 351; Hase v. Roehrscheid, 6 Ind. 66; State v. Clark, 16 Ind. 97; Myers v. State, 45 Ind. 160; Corbaley v. State, 81 Ind. 62; State v. Roche, 91 Ind. 406; Linskie v. Kerr (Tex. Civ. App.), 34 S. W. Rep. 766; Moore v. Moore, (Tex. Civ. App.), 31, S.W.Rep. 532; Cooper v.McNamara (Iowa), 60 N. W. Rep. 523; Field, Par. & C. § 54. Schouler, Dom. Rel., says, at section 242: "A father is, in general, liable for the funeral expenses of his deceased minor child; citing Blair v. Robinson, 108 Pa. St. 249; Sullivan v. Horner, 41 N. J. Eq. 299, 7 Atl. Rep. 441. The foregoing is the general rule. When the parent has not property of his own to support his minor child, resort may be had to the property of the child for such purpose, but such condition must first be made to appear before such a resort can be had. Corbaley v. State, *supra;* State v. Roche, *supra;* Rhode v. Tuten (S. C.), 13 S. E. Rep. 676. With equal reason a claim may be enforced against the estate of the minor for funeral expenses when the father is unable to pay them. It does not appear from the record that the father was not able to pay the claim in suit. Counsel for appellee cite a number of cases to the effect that a minor is liable for the reasonable value of the necessaries which may have been furnished him. This exception to the general rule that an infant cannot bind himself by his contracts is for the benefit of the infant himself, and not for those who give him credit. It has been decided that medical attention and articles furnished for the purposes of health may be recovered for as necessaries. Saunders v. Ott, 1 McCord, 572; Price v. Sanders, 60 Ind. 310. The infant is held on a promise implied by law, and not, strictly speaking, on an actual promise. Trainer v. Trumbull, 141 Mass. 527, 6 N. E. Rep. 761. In Chappel v. Cooper, 13 Mees. & W. 252, an infant widow was held bound by her contract as for necessaries for the funeral expenses of her husband, who left no property to be administered. An infant husband may contract for the interment of his deceased wife or children so as to be bound by his contract. In citing the case just mentioned, Mr. Schouler, in his Domestic Relations, at section 199, says: "The contract will have validity because it is a contract for the burial of those who are *personæ conjunctæ* with him by reason of the marriage, and as such it is to be regarded as a contract for his own personal benefit.' Appellee cites *In re* Butler, 1 Con. Sur. 59, as holding that the estate of the minor was liable for the funeral expenses. A father died testate, leaving a considerable fortune to a minor child. Upon his death while still a minor, unmarried, and without creditors, the executor paid the funeral expenses. Upon settlement the court held that the executor had no legal authority to make the payment, but that, as it was made in good faith, and the amount reasonable, it would be equitable to allow him credit for the same settlement of the trust, as an administrator of the minor's estate would have been authorized to pay the same. The facts would certainly authorize the payment out of the estate. No question of the liability of the father or the solvency of the minor's estate was raised as in the cause before us."

MASTER AND SERVANT—GROUNDS OF DISCHARGE—EMPLOYEE'S RIGHTS.—In Allen v. Aylesworth, 44 Atl. Rep. 178, decided by the Court of Chancery of New Jersey, it was held that when an employee wrongfully endeavored to examine his employer's books, to which he had no right of access, the fact that such employee's refusal to obey orders to instruct another in his duties was anticipated, and brought about by his employers to give them an additional reason for his dischnrge, is not sufficient to show bad faith on their part in discharging him for his misconduct in secretly examining their books. It ap-

peared that in settlement of an employee's interest in a firm, a contract was made by which he agreed, in consideration of a payment of money and a salary for future employment, to continue to work faithfully for his employers' interest. The contract further provided that his employers should execute a trust of certain securities to be paid to him on the completion of the contract, and that, if he was discharged for cause, such securities should be returned to them. It was held that such employee had no interest in the securities prior to the completion of the contract, and, on being discharged for misconduct, before the expiration of the term, he was not entitled to recover them. The court said in part: The first charge, that of opening the office desk and examining books or papers of defendants without their knowledge, is satisfactorily made out on the evidence, and such examination is not denied by complainant. He denies that he opened the top of the desk, but says that he opened a drawer of the desk in which the shipping book was, at the noon hour, and his present explanation is that he looked at it because Jackson had told him a day or two before that business was falling off, and he must lay off Carpenter, the brother-in-law of Allen, who was assisting him, and he went to the books, in his employers' absence, to find out what they were shipping. The examination was made under circumstances which justify the conclusion that complainant intended to make secret examination of the book, and without observation either of the employers or of any other employee. Allen's employment was in the manufacture of the articles, and in the course of his duty it does not appear that he had any occasion or right to examine any of the books of defendants, nor does he claim the right to examine the books he did examine. Without going into the evidence in detail or examining the other questions in the cause, my conclusion is that a good and sufficient cause of discharge from their employment existed by reason of this opening of the desk or of one of its drawers, and the examination of the books therein. This conduct of complainant was, in my judgment, such a breach of the implied condition of faithful service as entitled the employer to rescind the contract of employment. It was a breach of an employee's duty that went to the whole consideration of the employment, and was of such a character that the employer was not bound to run any risk of its repetition by the retention of the employee. The books and papers of an employer must, in the conduct of his business, be often necessarily exposed or kept so as to make secret examination possible by a dishonest or inquisitive employee, whose employment is not connected in any way with the books; and, where an employee so far loses his honesty or self-restraint as to examine his employer's books to which he has no right of access in his employment, this act, in my judgment, gives the employer a right to discharge the employee and terminate the contract of employment, and, if the employer in good faith exercises the right to discharge for this reason, it is not for the court to say that the employer must give the employee another trial, or run any risk of the repetition of the offense. Such repetition, if made after notice of the offense to the employer, would occur at his sole risk, and where he acts in good faith the employer is entitled, in my judgment, to decide the question of retention for himself. The evidence does not, in my opinion, disclose any such want of good faith. The fact that an additional reason for discharge—that of refusal to obey orders—was given, and that a fair question is raised on the evidence as to whether this refusal was not anticipated and brought about by the employers for the purpose of giving them an additional reason for discharge, is not sufficient to show that they did not act in good faith in discharging for the misconduct in secretly examining their books or papers. I hold, therefore, this ground of discharge sufficient, and the complainant, if the terms of the agreement are to control, is not entitled to the securities. It is urged, however, by complainant's counsel, that even if, by the strict terms of the agreement, the securities are to be so paid over to defendant, yet the agreement for such payments in effect produces a forfeiture of money or securities which belonged to complainant, and that it cannot be enforced in equity, and that the money must be returned to complainant, leaving him to answer to defendants in damages. But there is no sufficient basis for finding that this money so advanced by defendants, on the faith of this agreement, was complainant's money, put up by way of forfeiture or penalty. The contract was a special one, including several considerations, viz: the termination of an existing contract between the parties for an interest in previous profits, the settlement between them without further accounting, payment of $300 by defendants to complainant, the employment of complainant for over two years at good wages, and ultimate payment of $1,000 in addition for faithful service, together with a right to this sum at once, on discharge without cause, and the defendants were to deposit this sum or its equivalent with a trustee at once, and from their own money, so far as the contract shows. The contract itself shows that defendants' supplying the money for the purchase was based upon substantial considerations agreed upon between the parties, other than their owing it to complainant as a result of a settlement on accounting, and complainant's parol evidence that this was the source of the money is not sufficient to change the disposition of the money provided by the written contract, or to entitle him to claim it as a deposit of his money made by way of security. The contract, in its circumstances and terms, differs from those which are usually designated as fixing "forfeitures," within equitable control, and I have not been referred to

any case by counsel which, in my judgment, supports the present contention. I conclude that it is a case of enforcement of a written contract in which a court of equity must adhere to the contract the parties have themselves made as to the disposition of the money."

MUNICIPAL CORPORATION—TELEPHONE COMPANIES—USES OF STREETS.—It is held by the Supreme Court of Michigan, in Michigan Tel. Co. v. City of St. Joseph, 80 N. W. Rep. 383, that a court may order municipal authorities to adopt reasonable regulations for the use of its streets, and may pass on the validity of such action when taken, but it cannot assume to establish such regulations; being a legislative, rather than a judicial function; that under 3 How. Ann. St. § 4904e, authorizing corporations to alienate their property, a company having a franchise from a city for the use of its streets may alienate the same without the consent of the city; and that a municipality which has given to a telephone company permission to use its streets, which it has accepted, cannot impair the company's right to extend its lines, subject to such reasonable regulations as the authorities may prescribe, by refusing to establish reasonable regulations for the erection of its poles.

The court says in part: "It is urged that the permission granted to the Telephone & Telegraph Construction Company was personal to that company, and could not be alienated without the consent of the city. That company was organized under a general law of the State, and derived its powers and obligations from that law. The only power which a city could have exercised over it was that of regulation. This is also true of the complainant. The transfer was made August 31, 1895, was recognized as valid by the city and has been acted upon by both the city and the complainant since that time; the latter having expended large sums of money upon its business and improvements. Whether the city is now in position to question the validity of this transfer is at least debatable, but, as it is not argued by counsel, we refrain from discussing it. Counsel for the defendant cite in support of their contention 25 Am. & Eng. Enc. Law, 751, where it is stated 'that the grant of a franchise, public in nature, like that of a telegraph company, is personal to the grantee, and cannot be alienated except by consent of the granting power. Therefore a telegraph company has no power, in the absence of special authority, to alienate the privileges granted to it by the federal or State government, and an agreement to transfer such privileges is ultra vires and void.' The compiler cites, to sustain the text, U. S. v. W. U. Tel. Co., 50 Fed. Rep. 28, and W. U. Tel. Co. v. Union Pac. Ry. Co., 1 McCrary, 581, 3 Fed. Rep. 721. The general power of alienation was not discussed in the former case, nor was it raised. The conclusion reached was based upon the language of the act of congress authorizing the construction of the original Union Pacific Railroad. The company sought to transfer its telegraph line, and to avoid its duty to maintain it. It was noted as a significant fact that the words 'railroad and telegraph' were used in connection 38 times in the act. The railroad company was not seeking to transfer all its property, rights, and privileges to a successor who would be obligated to perform all the duties imposed by the act of congress, but was seeking to carve up its franchise and transfer a part of it to another corporation. The duty of the railroad company to maintain a telegraph was held to be personal. The same principle was approved in W. U. Tel. Co. v. Union Pac. Ry. Co. We are also cited to Crosw. Electricity, § 158, which reads as follows: 'A grant to a telephone, telegraph, electric light, or railway company of the power to use the streets, highways, and post roads for the stringing of its wires and the setting of its poles contains so much of an element of personal obligation, that such a grant is not assignable under such a power of assignment is expressed in the language of the grant, or in some general legislation affecting the subject.' The same authorities are there cited to sustain the proposition as were cited in the encyclopedia, and in addition Atlantic & P. Tel. Co. v. Union Pac. Ry. Co., 1 Fed. Rep. 745. That case involved the same act as the others. The last clause of the above section reads, 'If the grant is in terms to X., his successors and assigns, or similar language, it is assignable,' and cites Atkinson v. Railway Co., 113 N. Car. 581, 18 S. E. Rep. 254; Toledo Consol. St. Ry. Co. v. Toledo St. Ry. Co., 6 Ohio Cir. Ct. R. 362; California State Tel. Co. v. Alta Tel. Co., 22 Cal. 398; Newman v. Village of Avondale, 31 Wkly. Law Bul. 123. In Atkinson v. Railway Co. the question is not raised or discussed. The case was disposed of upon a demurrer to the bill of complaint which set up that complainant had obtained a license from the city to build a street railway; that he had assigned it in escrow to one M., who, in breach of the trust reposed in him, assigned it to the defendant corporation. The right of sale and transfer of all the property of the corporation is not alluded to in the decision. In the Ohio case the contest was between two street railways, the question being as to the right of one company to use the tracks of another. I do not find that the power to sell and transfer is even referred to in the case. In the California case the question is neither raised nor discussed. The sale there made was opposed upon other grounds. Page 428. The case of Newman v. Village of Avondale I have been unable to find. If defendant's contention be true, a mortgage of the property and franchise of these corporations would be void. The mortgage and bonds would be valueless unless there was a right to foreclose, sell, and convey to another party a valid title to the property. In Detroit v. Mutual Gaslight Co., 43 Mich. 594, 5 N. W. Rep. 1039, the grant was to the corporation, or rather to the

corporators or their assigns, who were to organize a corporation. The ordinance was silent upon the right of alienation, yet the sale of its entire property was held valid. It is immaterial that the construction company was not organized under the same act as was the complainant. It was organized under another act, empowering such companies to carry on the like business; and one of its objects declared in its articles of association was the purpose of erecting and operating telegraph lines, etc., in the cities and towns of the State. The public was not concerned in the transfer to another corporation. It suffered no injury. The assignee was subject to the same control and obligated to the same duties as was its assignor. Justice Christiancy, in Joy v. Road Co., 11 Mich. 164, asserted the right of corporations to dispose of their property by absolute sale or mortgage in payment of their debts, unless such right is limited by some express provision or just implication of a statute, or by the general policy of the State to be deduced from its legislation. In this opinion Chief Justice Martin concurred. The other justices held the mortgage in that case valid under the statute, but reserved their opinions as to the general power of such corporations to mortgage. But, whatever may be the common-law rule, the statute puts the question at rest, and expressly authorizes corporations to alienate their property. 3 How. Ann. St. 4904e. The sale, therefore, to the complainant was valid.

"When the construction company and the complainant accepted the privileges granted to them by the laws of the State, and the municipality had duly given its permission, and the corporation had expended their money in valuable improvements, contracts were entered into which neither the State nor the municipality could impair or destroy, in the absence of power to do so being reserved in the grant itself or in the constitution, which becomes a part of all such contracts. The constitution and the statute clothe municipalities with power to control their streets and alleys and protect them from things injurious and dangerous to the public; hence they have the power to make all reasonable rules and regulations for the erection and maintenance of poles and wires for telegraph and telephone companies. Here its power in the matter ceases. Detroit v. Mutual Gaslight Co., *supra;* Grand Rapids v. Grand Rapids Hydraulic Co., 66 Mich. 606, 33 N. W. Rep. 749; City of Saginaw v. Swift Electric Light Co., 113 Mich. 660, 72 N. W. Rep. 6; Baltimore Trust & Guarantee Co. v. Mayor, etc., of City of Baltimore, 64 Fed. Rep. 159; City of New Orleans v. Great Southern Telephone & Telegraph Co., 40 La. Ann. 41, 3 South. Rep. 533; City of Quincy v. Bull, 106 Ill. 337; Hudson Tel. Co. v. Jersey City, 49 N. J. Law, 303, 8 Atl. Rep. 123; Town of Arcata v. Arcata & M. R. R. Co., 92 Cal. 639, 28 Pac. Rep. 676. Since the argument, counsel for defendant have called our attention to the recent case of City of Richmond v. Southern Bell Telegraph Co. (decided in the Supreme Court of the United States in May last) 19 Sup. Ct. Rep. 778. The company in that case was acting under a law of congress, and claimed the right under the act of congress to use the streets without interference by the city authorities. The circuit court of appeals held that the rights and privileges granted by the act of congress were subject to the lawful exercise of the police power belonging to the State or its municipalities. This holding was affirmed by the supreme court. That the case is no authority for the action of the common council in the case before us. The City of Richmond had, through its common council, adopted an ordinance prescribing the terms under which the telephone company might use its streets. The reasonableness of that order was not questioned. The question is not, as counsel for the defendant state, the right to regulate the use of its public streets. This right is conceded by the complainant, and in the petitions it presented to its common council. The action of the council is practically prohibitive of the use of the streets. The defendant city by its act of incorporation obtained no other or greater rights or control over the complainant than the village had over it and its assignor. Both, under the police power inherent in municipalities, possessed the right of reasonable regulation."

GARNISHMENT OF FOREIGN CORPORATIONS.

The foreign corporation and the statutory conditions imposed upon it of jurisdiction present interesting problems in later judicial decision. Before corporations began extensively to carry on business in other States than the one of their charter or creation, the almost solitary instance of garnishment, or, as also called, trustee, process being served upon a debtor of the defendant elsewhere than at his residence, was that of his being transiently abroad. It was quite uniformly held that a transient presence could not be so availed of. The reasoning reaching this result often ignored the question of *situs* of the debt and related to privilege of the garnishee, or to statutory construction. Thus it was held that it was clear that a garnishee having goods or wares of the defendant at his domicile, should not be put to the inconvenience of transporting them elsewhere, and so he should not be compelled to pay a debt elsewhere.[1] As to statutes broad enough to

[1] Sawyer v. Thompson, 24 N. H. 510; Tingley v. Bateman, 10 Mass. 343; Lawrence v. Smith, 45 N. H. 533.

embrace non-resident as well as resident garnishees, it was held the construction should be limited to residents, as the legislature should not be supposed to have intended the entering of a judgment, the writ upon which would have no enforceability.[2] Some held that the *situs* of the debt for garnishment was at the residence of the debtor.[3] In these cases there did not seem to the court to be at stake any principle of great commercial importance, and far less did it appear that the question of *situs* of a debt had any relation to a State's protection of its citizens through exemption laws. The newer conditions have necessitated a decision of this question of *situs* upon principle. Formerly there was little in the situation to prevent the courts from seeking to aid the creditor of the defendant in the collection of his debt, and if he were to have the process of garnishment at all it must be at the residence of the debtor of the defendant. That this could be done as to all residents of the State is, perhaps, too manifest to need discussion, and in the few instances that arose of non-resident debtors of defendant, the same thing seems rather to have been assumed than strictly discussed and decided upon principle. Whatever may be the cause, there now seems to be between the courts of different States a hopeless irreconcilability on this question. There has grown up such a diversity of opinion, so far as foreign corporations are concerned, that it is demonstrable that a corporation operating at its domicile and carrying on business as a foreign corporation, might, if sufficiently extended in the States, be compelled to pay the same debt three times and there still be a doubt whether it could not be compelled to further respond. Let us illustrate. Suppose three plaintiffs successively sue the same defendant, all obtaining service by publication, each garnishing the corporation. In Minnesota the corporation is foreign, the defendant non-resident, and the wages constituting the debt earned in Alabama, where the defendant resides.[4] The Minnesota court says the *res* is in the jurisdiction, and subjects it. New York[5] is the corporation's domicile; and it is there held that the Minnesota court had no jurisdiction, because both defendant and garnishee were non-residents, and that the garnishee residing in New York, *there* is the jurisdiction. In Alabama[6] the courts hold the *situs* is the domicile of the creditor of the corporation, but service not being had upon defendant because he has concealed himself, no personal judgment is rendered. Who will affirm that neither in Michigan nor in Kansas can the employee himself recover, because of the principle maintained in the courts of those States that the exemption, being a vested right *in rem*, accompanies and protects wages wheresoever seized?[7] In the transient persons cases there is seen to be an evident distinction between a garnishee non-resident "found" in another jurisdiction, and a person sued as a defendant so found. The only means of defeating jurisdiction in the latter case would be to show that presence there was fraudulently obtained for that very purpose, while the only way to establish jurisdiction as to a garnishee, presumably a transient, would be to show he had *animus manendi*. Even as to suits against a corporation, it has been held that jurisdiction could not be obtained by service upon the principal officer casually in the jurisdiction not on business of the corporation.[8]

[2] Green v. Bank, 25 Conn. 454; Nye v. Lipscomb, 21 Pick. 263; Ray v. Underwood, 3 Pick. 302; Hart v. Anthony, 15 Pick. 445.

[3] The Green case shows how little considered was the question of *situs* as it intimates, but does not decide that the *situs* was at domicile of creditor, the others deeming it at domicile of debtor.

[4] Harvey v. Gt. Northern R. Co., 50 Minn. 406. In H. & St. J. R. Co. v. Crane, 102 Ill. 249, a debt owing by a Missouri corporation payable in Missouri to an inhabitant there, was held garnishable in Illinois.

[5] Douglas v. Ins. Co., 138 N. Y. 209, says that there was no jurisdiction in a case on all fours with the Harvey case, and in the opinion the court says: "The general rule is well settled, that the *situs* of debts and obligations is at the domicile of the owner. But the attachment laws of our own and other States recognize the right of a creditor of a non-resident to attach a debt or credit due to the non resident debtor by a person within the jurisdiction where the attachment issues."

[6] L. & N. R. Co. v. Nash, 41 L. R. A. 331, 23 South. Rep. 825. This case holds: "That any legislation by the garnishee State attempting to acquire jurisdiction over the debt by declaring it to be property within its limits is a mere nullity. To same effect is Ill. C. R. Co. v. Smith, 70 Miss. 344.

[7] Drake v. Ry. Co., 69 Mich. 168; Mo. P. R. Co. v. Sharritt, 43 Kan. 375; Mo. P. R. Co. v. Maltby, 34 Kan. 125.

[8] Bank of Va. v. Adams, 1 Pars. Eq. Cas. 534; Goldey v. Morning News, 156 U. S. 518; Newel v. Great Western R. Co., 19 Mich. 336.

It may be upon the theory of presence partaking of residential character, that many courts hold a foreign corporation to be liable in garnishment to the same extent as a resident, though the reason ordinarily advanced is, that as there its creditor can sue it, so can the creditor of the creditor there garnish.[9] It must be conceded, it seems, that a State has the right to impose upon a corporation, as a condition of its carrying on business in its limits, that it may there be sued as well upon transactions arising without as within the State, and as well by non-resident as resident;[10] but some of the courts maintain it is so unreasonable to impose the condition as to outside transactions, that merely general terms should not be deemed to include them.[11] If this position is sound as respects creditors of the corporation itself, *a fortiori* is it so, as to creditors of its creditors, and there would seem to be little reason or justice in binding them to a matter that is *res inter alios acta*.

A corporation cannot migrate, as to change its residence would be giving extraterritorial effect to statutes. It is in another State merely by comity and its existence there recognized, upon condition imposed and accepted. It can no more have two domiciles than can a natural person. To-day the *situs* of my debt, if it is at the domicile of the debtor, is in one State. To-morrow the corporation places it in two States and in a month it may be in many States, all without my concurrence or consent, though I own the debt. There seems nothing in the nature of indebtedness by a corporation to change its *situs* into ubiquity, and it is certainly impossible for indebtedness of an individual to take on such characteristic. If there is any difference as to permanency in *situs*, it would rather seem to adhere to corporate indebtedness, because an individual can change *his* abode, but a corporation cannot change *its* abode. The argument that it is just and reasonable, that the *situs* should be ambulatory, because there are other places given the creditor of the corporation to sue, ought not to be of great weight, as the law should not presume the creditor to take a burden for a supposed benefit he never asked. To allow the *situs* of corporate indebtedness to remain fixed, puts it upon the same footing as that of individual indebtedness, and equality is a fair rule, at least, of justice and reasonableness.

In Reimers v. Seatco Mfg. Co.[12] it is held that a foreign corporation is not garnishable upon a debt seized in a State, to which the corporation resorts merely for the purpose of doing business, when the claim arose on a contract not to be performed in the State, the principal defendant being a non-resident. It was conceded in the opinion in that case, that such a corporation was subject to garnishment, but a statute, though broad enough to include such a contract as that at bar, was held to be of such doubtful validity that it should be construed as being satisfied by confining it to transactions arising in the State.

If the *situs* of a debt could be indefinitely multiplied by a corporation accepting statutory conditions in new jurisdiction, this solves the hitherto insuperable difficulty of giving extraterritorial force to legislation, but I much doubt whether the seizure of the debt in the new jurisdiction and service by publication would supply the desideratum of due process of law, as contemplated in the opinion by Justice Field in the case of Pennoyer v. Neff.[13] The reason of the rule that seizure gives jurisdiction, as there laid down, is that the law "proceeds upon the theory that seizure will inform him" (the owner). If the owner of the debt cannot be presumed to know the locality or *situs* of his debt, how can he be presumed to know what is being done in relation to it? By the Pennoyer-Neff case a statute was condemned as not furnishing due process of law, merely because it provided for an action to subject the *res* in the jurisdiction without preliminary seizure, no lien or special right in the property being claimed. To my mind that statute was a much closer approach to due process of law than permitting an artificial person, with no capacity of change of residence, by virtue of comity, to give the property of another ambulatory ex-

[9] Neufelder v. Ins. Co., 6 Wash. 336; H. & St. J. R. Co. v. Crane, *supra*; Barr v. King, 96 Pa. St. 485.

[10] Bank of Augusta v. Earle, 13 Pet. 519; Paul v. Virginia, 8 Wall. 168; Lafayette Ins. Co. v. French, 18 How. 407.

[11] Reimers v. Seatco Mfg. Co., 70 Fed. Rep. 373; Bank v. Fustick, 44 L. R. A. 115 (Del.); Ins. Co. v. Chambers, 53 N. J. Eq. 468; Condon v. Life Assn., 44 L. R. A. 149 (Md.).

[12] 70 Fed. Rep. 373.

[13] 95 U. S. 714.

istence, not for its conservation, but so as to facilitate its appropriation by proceedings in derogation of common law and in which no personal judgment can be rendered. The theory of seizure of both tangible and intangible property, a chattel or a chose in action, coming to the knowledge of the owner is that the bailee or debtor is the agent of the owner, but as it is a familiar principle that delegated power cannot be delegated, how can it be held that recognizing a foreign corporation, which is merely the agent of the corporation proper, affects the *situs* of the debt the corporation owes? If it is answered, that in the new jurisdiction the statute there regards it, and the corporation consents that it be regarded as the corporation itself, I say that is no answer, as the statute cannot reach my property and the corporation cannot send it where the corporation is itself unable to go.

All the considerations mentioned as to mutation of *situs* and its extension and multiplication refer, of course, in no way to the case of *situs* being at the domicile of the creditor, the owner of the debt. It is said by Judge Clark[14] that the weight of authority is on that side of the proposition, and he cites a number of cases to that effect and claims they are the better considered. It seems also that the general *situs* of debt is the domicile of its owner, and in the language of Justice Field in the State Tax case[15] "it is a misuse of terms to say the debtor is the owner of a debt." This is the *situs* for the purposes of succession, distribution and taxation and under insolvency statutes, and so rigidly so that statutes infringing that rule have no extraterritorial force whatever. In Bragg v. Gaynor[16] where the opinion holds to the rule of *situs* at the domicile of the debtor, this is conceded, but it is claimed it is within the competency of legislation at the home of the debtor to enact otherwise, as the debtor is the creditor's agent to this extent. That this is true seems far from clear, and if t be, how is the owner to be notified that the *situs* of his property is not according to the general rule? The enactment of a statute in the foreign jurisdiction gives him no notice, for foreign statutes are not of judicial cognizance, but must be proved as other facts. In Root & McBride Bros. v. Davis[17] the Ohio Supreme Court draws the precise distinction sought, in ruling that it is within the power of the State to make the *situs* of the debt at the county of debtor, as between its own citizens, but not as between a citizen and a non-resident creditor. This distinction rests on the control of each State over its own citizens and assumes the inviolability of their rights by other States.

However to be regretted this irreconcilability may be, when liable to produce the results I have indicated, and even though it may prove something of a menance in a commercial way, yet there seems to be a far more serious result than injustice to corporations. I think it of more than passing importance, that the tribunals of one State should be overturning the legislative policy of another. The rule of *situs* at the domicile of the debtor has this inevitable effect, and a decision in another State that the *situs* of debt is the domicile of the creditor, merely accentuates this fact. The cases of Illinois Central Railway Co. v. Smith,[18] from Mississippi, and Louisville and Nashville R. R. Co. v. Nash,[19] from Alabama, were merely vindications of State policy in holding that a laborer's wages could not be taken away from him by creditors in foreign jurisdictions, at least not on publication service. How rarely this vindication has been had may be only conjectured, but it would be safe to say that probably not in one instance out of five hundred cases has the employee compelled the corporation to pay when it has been already made to pay. In this maze and clash of contending courts it is not the corporation that is ground between the upper and nether stone, but the toilers, while they witness the impotency of the protection statutes profess to give. If the State might check the rapacity of its own citizens, it would but enlarges the unassailable license of the non-resident. The tribunals of other States, following the logic that denies

[14] Trust Co. v. R. R. Co., 68 Fed. Rep. 685. Here is to be found a very full discussion of the subject of *situs* of debt, and it is ruled that a foreign corporation being subject to suit does not affect *situs* of debts due a non-resident of the State.

[15] 15 Wall. 300; Kirtland v. Hotchkiss, 100 U. S. 491.

[16] 85 Wis. 468.

[17] 51 Ohio St. 29. This case says that to hold *situs* of a debt due a non-resident creditor is opposed to a decision of the United States Supreme Court, but the case is not cited.

[18] 70 Miss. 344.

[19] 41 L. R. A. 331, 23 South. Rep. 825.

extraterritorial vigor to exemption laws, says, also, that statutes forbidding assignments for the purpose of evading the laborer's exemption, are likewise inefficient abroad.[20] The poor privilege of applying for injunction, upon the authority of Cole v. Cunningham,[21] to protect a month's wages, can only be exercised against a home creditor. The laborer is in the toils, and the State is powerless. The rule stated in Reimers v. Seatco Mfg. Co.,[22] seems, so to speak, to offer a *modus vivendi* between conflicting courts. Not many of the courts holding to *situs* at domicile of debtor have committed themselves to the proposition that this *situs* is with the foreign corporation, in addition to being at the home of the corporation, too. In ninety-nine per cent. of the cases, I venture to say, such a rule would eliminate the vexed question thus dividing the courts, and instead of exemption laws proving a delusion and a snare, they would be as veritable a shield as if a laborer worked for an individual, instead of a colossus that bestrides all the States.* NEEDHAM C. COLLIER.

[20] Stevens v. Brown, 20 W. Va. 450.

[21] 133 U. S. 107.

[22] *Supra.* In Douglas v. Ins. Co., *supra*, it is said: "We think the rule is, that a domestic corporation cannot be garnished in another jurisdiction for a debt it owes its home creditor." In Everett v. Ins. Co., 4 Colo. App. 509, it declares it to be impossible by judicial construction or legislative enactment to acquire jurisdiction over a debt having a domicile with debtor or creditor outside of the State.

* Since this article was put in type I have found the case of Chicago, etc. Ry. Co. v. Sturm, 174 U. S. 797 (May 22, 1899), which decides that for attachment purposes the *situs* of a debt is the domicile of the debtor, and that exemption laws do not affect jurisdiction. It not only does not decide that a foreign corporation is subject to garnishment, but, on the contrary, expressly based jurisdiction on the fact that the garnishment was served on the corporation in its home State, the opinion saying: "We are not concerned to inquire whether the cases which decide that a debtor temporarily in a State cannot be garnished are or are not justified by principle." This case is far from overruling, however, either the Smith or Nash case, *supra*. Overturning, as it does, all or nearly all of the U. S. Circuit Court cases, the case is well worthy of independent treatment.
N. C. C.

CARRIERS—STOPPAGE IN TRANSITU—BONA FIDE PURCHASER.

BRANAN v. ATLANTA & W. P. R. CO.

Supreme Court of Georgia, July 19, 1899.

The right of stoppage *in transitu* of goods sold on a credit, when the consignee is insolvent, exists against such consignee and all purchasers from him, until there has been an actual delivery of the goods to the consignee, or to a purchaser under his order; and until such delivery has been made, and possession of the goods obtained, the title of a *bona fide* purchaser from the consignee, without notice, can only be made good against the exercise of such right by an assignment of the bill of lading.

LITTLE, J.: Branan Bros. instituted an action in trover against the Atlanta & West Point Railroad Company and C. V. Truitt to recover 10 boxes of tobacco. The evidence made substantially the following case: Spencer, Traylor & Co. sold to Cunningham, a merchant in Lagrange, 10 boxes of manufactured tobacco, on a credit, and delivered the same to the Richmond & Danville Railroad Company, at Danville, Va., to be forwarded to Cunningham; taking from the railroad company an ordinary bill of lading, which the consignors transmitted to the consignee. The tobacco arrived in Lagrange over the Atlanta & West Point Railroad, and was placed in the warehouse of the company for delivery. Cunningham became insolvent, and was indebted to the firm of Branan Bros. in the sum of $176. A member of that firm called on Cunningham for the payment of the debt. The latter proposed to pay the bill with the tobacco, which was then in the warehouse of the railroad company, and had not been delivered. The proposition was accepted. Cunningham gave an order on the agent of the Atlanta & West Point Railroad to deliver to C. I. Branan the tobacco then in the carrier's possession, consigned to him; being the tobacco which had been shipped by Spencer, Traylor & Co. At the time of the delivery of the order, Cunningham also delivered to Branan Bros. the bill of lading for the tobacco, which was an ordinary contract of affreightment, specifying the name of the consignor, the goods shipped, and stipulating that they were to be transported to Lagrange and delivered to Cunningham. There was no indorsement or assignment of the bill of lading, nor did Branan Bros. know that the tobacco had not been paid for. After receipt of the order and bill of lading, the representative of the firm presented the order and bill of lading to the agent of the railroad company, paid the freight on the same, went to the place in the depot where the tobacco was deposited, put his hands upon it, and told the agent that he desired to mark it to his firm at Atlanta. The agent said that he would take charge of it for Branan Bros., and ship it to Atlanta, consigned to that firm, as directed, and in pursuance of such understanding gave to Branan Bros. a receipt in the following words: "Atlanta & West Point R. R. Lagrange, 4-21-92. Received from Branan Bros. ten boxes tobacco, 550. Consignor, Branan Bros.; destination, Atlanta, Ga. A. R. Ravenscroft, Agent." The purchase was in payment of an antecedent debt, and the price was reasonable. Cunningham did not go to the depot with the representative of the firm. Later on in the same day, and while the tobacco was in the warehouse awaiting shipment to At-

lanta, Spencer, Traylor & Co. notified the railroad company not to deliver the tobacco to Cunningham, but to deliver the same to Truitt, one of the defendants in error. This was done, and the action was brought by Branan Bros. to recover the tobacco. On the trial, the jury, under the charge of the court, rendered a verdict in favor of the defendants. A motion for a new trial was made on several grounds, and overruled. The plaintiffs in error excepted.

A number of grounds are set out in the motion for a new trial, but, inasmuch as the case turns upon the question of a proper construction of the law regulating a vendor's right of stoppage *in transitu*, we find it more satisfactory to discuss and apply to the facts of the present case the rules of law which govern such stoppage, than to formally pass upon the several grounds of the motion. There are several definitions of this right given by text writers, as well as made by adjudicated cases, which we have examined with some interest. Chancellor Kent, in the second volume of his Commentaries (page 702), defines the right of stoppage *in transitu* to be that which the vendor has, when he sells goods on credit to another, of resuming possession of the goods while they are in the possession of the carrier or middleman in the transit to the consignee or vendee, and before they arrive into his actual possession, or the destination he has appointed for them, on his becoming bankrupt and insolvent. The Supreme Judicial Court of Massachusetts (Potts v. Railroad Co., 131 Mass. 457) declares that the right of stoppage *in transitu* is an equitable extension recognized by the courts of common law, and the seller's lien for the price of goods for which the buyer has acquired the property but not the possession. Mr. Hutchinson, in his Law of Carriers (section 409), says that this right is based on the plain reason of justice and equity, that one man's goods shall not be applied to the payment of another man's debts, and that if after the vendor has delivered the goods out of his own possession, and has put them into the hands of the carrier for delivery to the buyer, he discovers that the buyer is insolvent, he may retake the goods, if he can, before they reach the buyer's possession, and thus avoid having his property applied to paying debts due by the buyer to other people. An interesting discussion of the seller's right of stoppage *in transitu* is found in Prof. Burdick's treatise on the Law of Sales of Personal Property (page 217). This author declares that this right is not founded on any contract between the parties, nor on any ethical principle, but upon the custom of merchants; that, while it is analogous to the right of lien, the two differ in some important respects. That is, the right of lien is not available unless the seller is in possession of the goods in the character of an unpaid former owner, and this right is determined as soon as the buyer or his agent lawfully obtains possession. On the other hand, the right of stoppage *in transitu* does not come into existence until the goods have passed out of the vendor's possession, into the hands of a carrier, for transmission. It is immaterial, however, for the purpose of this discussion, to ascertain whether the right is in the nature of a lien, or whether it arises from the custom of merchants. Certainly it exists under certain well-defined rules and regulations, and it is a right which is favored by the courts. It is essential, however, to the exercise of the right, that the goods should be in transit at the time. Mr. Parsons, in the first volume of his Law of Contracts (bottom page 624), says that it is sometimes difficult to determine whether the goods which it is sought to stop are still *in transitu*, and declares that it is well settled that goods are *in transitu* not only while in motion, and not only while in the actual possession of the carrier, but also while they are deposited in any place distinctly connected with the transmission or delivery of them, or, rather, while in any place not actually or constructively the place of the consignee, or so in his possession or under his control that the putting them there implies the intention of delivery. And again, on page 626 of the same volume, this author declares that they are in transit until they pass into the possession of the vendee. Our Civil Code (section 2285) declares that the right continues until the vendee obtains the actual possession of the goods, and it is also declared in section 3552 of the same Code that, if the goods are delivered before the price is paid, the seller cannot retake because of failure to pay, but until actual receipt by the purchaser the seller may at any time arrest them on the way, and retain them until the price is paid. Again, it is provided by section 3553 of the same Code that a *bona fide* assignee of a bill of lading of goods for a valuable consideration, and without notice that the same were unpaid for and the purchaser insolvent, will be protected in his title against the seller's right of stoppage *in transitu*. These three sections of the Code, taken together, seem to declare the proposition that until the goods actually come into the possession of the consignee the right of stoppage *in transitu* continues, and the only exception made is that a *bona fide* assignee of the bill of lading for a valuable consideration, who has no knowledge that the same had not been paid for, and the purchaser insolvent, will be protected against this right.

While the cases passed on by this court which bear on this subject are few, the principles on which they were ruled are plainly and explicitly stated. In the case of Railroad Co. v. Meador, 65 Ga. 705, the plaintiffs in error undertook to stop in transit certain boxes of tobacco which they had shipped from Atlanta to Macon, consigned to Carlos. After the goods had arrived in Macon, the treasurer of the railroad company, under an agreement with the consignee, set the tobacco aside, to be sold by the company to pay past-due freights, and, if any balance remained, to pay the same to the consignee. The consignee having been forced into bankruptcy, the question arose whether the tobacco had been so delivered into

the possession of Carlos as to defeat the right of stoppage *in transitu*. In dealing with this question the court calls attention to the fact that the consignee did not go with Brantly, the treasurer, and have the boxes of tobacco set apart, but gave orders in relation to the same, and they were set apart under such orders, by being moved from one part of the carrier's warehouse to another, and that actual possession was never in Carlos at all, but that possession in him was only constructive. It also calls attention to the fact that the bill of lading had not been delivered or transferred, nor the freight paid. Under these circumstances, it was ruled that there never was any actual possession in Carlos, the consignee, nor any actual delivery to him, or to anybody for him. There are a number of decisions of other courts, which, had they been followed, would have constrained the ruling that such a constructive delivery of the tobacco as appears in the Meador case would have defeated the right of stoppage; but this court in construing the principles of law contained in three sections of the Code which we have quoted above, *in pari materia*, held the rule to be that the right would not be defeated until actual possession of the goods had been secured by the consignee, except only in the case of an assignee of the bill of lading, without notice that the goods had not been paid for, and the fact of the insolvency of the consignee. That such was the construction of our Code is made manifest by the ruling in the case of Steamship Co. v. Ehrlich, 88 Ga. 502, 14 S. E. Rep. 707. In that case goods were consigned in New York, to be delivered to Epstein & Wannbacher, at Savannah, and shipped by the Ocean Steamship Company. On arrival they were placed on the wharf of the steamship company. The freight and wharfage had been paid, and nothing remained to be done to change the actual possession from the carrier to the consignee, except to remove the goods. It was shown that it was the custom of the carrier to deliver goods so placed, when the freight and wharfage were paid, without requiring the bills of lading. The consignees sold the goods to Ehrlich, and exhibited to the purchaser the bills of lading, but executed no assignment of such bills. They delivered to him the receipted freight and wharfage bills, and also an order on the carrier for the goods, and Ehrlich paid the agreed price. On exhibition of the order to the carrier, a part of the goods were delivered and carried away. On returning for the remainder, it was found that the consignor, in New York, had notified the carrier not to deliver the goods to the consignee. The carrier, acting under the notice, refused to make further delivery of the goods; and the question was, were the consignors in time? After citing the provisions of the Code above referred to, Chief Justice Bleckley, delivering the opinion of the court, said: "Under these provisions, nothing defeats the right of stoppage but actual possession in the vendee, or *bona fide* assignment of the bill of lading. * * * The actual possession of the goods, not removed from the wharf, was certainly never in (the consigned), and what they did not have they could not confer on their vendees. * * * As the consignors were not too late relatively to the consignees, they were not too late as to purchasers from the consignees who had not obtained actual possession. * * * If these bills had been assigned, that would have been equivalent to an actual delivery of the goods. The law recognizes no substitute for such assignment. This right is regulated by law, and is terminated or defeated only in the way which the law recognizes." It is not necessary, for a proper decision of the question which arises in the present case, to add anything to this adjudication, but an examination will show that the same principles are ruled and adhered to in very many adjudicated cases emanating from other jurisdictions. In the case of Calahan v. Babcock, 21 Ohio St. 281, the Supreme Court of Ohio ruled: "The right of stoppage *in transitu* is regarded with favor, and the ingrafting of further restrictions upon the rule governing it is not warranted by public policy. The right of stoppage *in transitu* is extinguished only by the actual and complete delivery of the goods consigned, to the vendee, or to some agent of and for him." Again, in 37 U. S. App. 268, 16 C. C. A. 232, and 69 Fed. Rep. 302, in the case of McElwee v. Lumber Co., the circuit court of appeals ruled: "No subsale during transit will defeat the right unless the bill of lading be transferred." In the case of Loeb v. Peters, 63 Ala. 243, the Supreme Court of Alabama ruled: "The right of stoppage by the seller is lost, when, before it is exercised, the purchaser has sold the goods, and indorsed the bill of lading, to a subpurchaser for value in good faith." To the same effect, see Becker v. Hallgarten, 86 N. Y. 167, and a large number of cases cited in note 4 to section 2495, 5 Lawson, Rights, Rem. & Prac. The claim of the plaintiffs in error in this case is that the sale made to them by the consignee, and the subsequent recognition of such sale by the carrier, and the agreement on its part to reship the goods, were such a delivery as vested in them title to the goods, free from the right of stoppage *in transitu*. It must be remembered, however, that nothing will defeat this right, except actual possession of the goods by the consignee, or an assignment of the bill of lading, which is a symbolic delivery of the property. Neither of these things was done. Cunningham never did have possession of the goods. The bill of lading was never assigned by him to plaintiffs in error. It cannot be doubted, under the facts which appear in the record, that Branan Bros. purchased the goods in good faith from Cunningham, the consignee; but it cannot be insisted that by such purchase they obtained any better title than Cunningham, the consignee, had when the goods were delivered to the carrier, in Danville, Va. The legal effect of such delivery was to vest the title in Cunningham, and it so remained, but the title which he held was subject to the right of

the vendor to stop the goods before actual delivery. He could convey to the purchaser from him no more than he had, and therefore Branan Bros., taking Cunningham's title, took the tobacco subject to the right of the vendor to stop it so long as it remained in the hands of the carrier. Holbrook v. Vose, 6 Bosw. 76. If it be said that the goods were not in the hands of the carrier for delivery to the consignee, the reply is that as long as the company, in any capacity, except as agent of the consignee, has control of the goods—whether carrier or warehouseman—the vendor's right is not terminated; for, as long as anything remains to be done in order to complete a delivery to the consignee, that long the right of stoppage *in transitu* endures. 4 Elliott, R. R. p. 2395, and note 3, making reference to a large number of adjudicated cases. There had been no actual delivery of the goods either to the consignee or Branan Bros. Under the authority of the Meador case, *supra*, the delivery to the latter was constructive, not actual. Without actual delivery, or the legal symbol of it, the purchaser could not defeat the right. Subject to this right, the purchaser changed the destination, to which change the carrier assented, but while in its hands as carrier, before the goods had been started on their new destination, the right to stop was exercised; and so long as they remained in the possession of the carrier, and it had control over them, the right existed in the original vendor, as against the consignee, who had never had them, and a purchaser from them who bought subject to the right.

In our judgment, the court committed no error in the charge of which complaint was made. The verdict is in accordance with the law and evidence, and the court committed no error in overruling the motion for a new trial. Judgment affirmed. All the justices concurring.

NOTE.—*Right of Stoppage Continues Until Goods are Delivered to Consignee.*—Until the actual or constructive delivery to the consignee of property in transit, the right of stoppage *in transitu* continues. Farrell v. Richmond & D. R. Co., 3 L. R. A. 647, 102 N. Car. 390, 9 S. E. Rep. 302; The Natchez, 31 Fed. Rep. 615; Langstaff v. Stix, 64 Miss. 64. There may be cases where the carrier becomes the agent of the vendee and holds as a warehouseman for him, but such agency will not be implied from his original employment, and until some agreement or understanding to that effect is affirmatively shown, he will be presumed to retain them in his original capacity of carrier. Symms v. Schotten, 35 Kan. 310; Calahan v. Babcock, 21 Ohio St. 293, 8 Am. Rep. 63; Hays v. Mouille, 14 Pa. St. 51; Bender v. Bowman, 2 Pearson (Pa.), 517; Greve v. Dunham, 60 Iowa, 108; Clapp v. Peck, 55 Iowa, 270; O'Neil v. Garret, 6 Iowa, 628; Alsberg v. Latta, 30 Iowa, 442; Reynolds v. Boston, etc. R. Co., 43 N. H. 580; Inslee v. Lane, 57 N. H. 454; Atkins v. Colby, 20 N. H. 155; Guilford v. Smith, 30 Vt. 65; Halff v. Allyn, 60 Tex. 278; Chandler v. Fulton, 10 Tex. 1, 60 Am. Dec. 188; Seymour v. Newton, 105 Mass. 275; Naylor v. Deunie, 8 Pick. (Mass.) 198; Powell v. McKechnie, 3 Dak. 319; Parker v. McIver, 1 Desaus. Eq. (S. Car.) 281; Macon, etc. R. Co. v. Meador, 65 Ga. 705; Mottran v. Heyer, 5 Den. (N. Y.) 629; Covell v. Hitchcock, 23 Wend. (N. Y.) 611; Harris v. Hart, 6 Duer (N. Y.), 606; Coventry v. Gladstone, L. R. 6 Eq. 44; Kendal v. Marshall, 11 Q. B. Div. 366; McLean v. Breithaupt, 12 Ont. App. 383; Foster v. Frampton, 6 B. & C. 107, 13 E. C. L. 111; Bolton v. Lancashire, etc. R. Co., R. L. 1 C. P. 431; Whitehead v. Anderson, 9 M. & W. 535; Bartram v. Farebrother, 1 M. & P. 526; Jackson v. Nichol, 5 Bing. N. Cas. 508; Kemp v. Falk, L. R. 7 App. Cas. 584; *Ex parte* Barrow, 6 Ch. Div. 783; *Ex parte* Cooper, 11 Ch. Div. 68. Where on the arrival of a vessel containing a load of lumber, the consignee went on board and told the captain that he had come to take possession and went down into the cabin into which the ends of the timbers projected, and saw and touched them with his fingers and the captain made no reply at the time, but afterwards told him at the same interview, that he would deliver the cargo when satisfied about his freight charges, it was held that the captain had not contracted to hold as agent of the consignee and the transit was not at an end. Whitehead v. Anderson, 9 M. & W. 518. And in this case Parke, B., said: "It appears to us very doubtful whether an act of marking or taking samples or the like, without any removal from the possession of the carrier, though done with the intention to take possession, would amount to a constructive possession unless accompanied by such circumstances as to denote that the carrier was intended to keep, and consented to keep, the goods in the nature of an agent for custody." In McLean v. Breithaupt, 12 Ont. App. 383, goods were shipped to the buyer on a shipping bill containing the following conditions: "In all cases . . . the delivery of the goods will be considered complete and the responsibilities of the company shall terminate when the goods are placed in the company's shed or warehouse . . . when they shall have arrived at the place to be reached upon the railway of the company. The warehousing of them will be at the owners risk, . . . storage to be charged on all freight remaining in the depot over forty-eight hours." On the arrival of the goods at their destination the buyer requested that they be kept for him by the company until he could find time to remove them, and that no storage be charged, but the railroad agent did not promise. This was held to be no delivery, and the seller allowed to exercise the right of stoppage. The right of stoppage *in transitu* is not lost by the delivery of the goods by the carrier to a local transfer company for delivery to the vendee, if they were received by the local company for conveyance only, and not for safe custody or disposal on the part of the vendee. Scott v. William B. Grimes Dry Goods Co., 48 Mo. App. 521. Delivery under a contract of sale is complete and the right of stoppage *in transitu* at an end when the goods are stored in sheds belonging to the purchaser, subject to his exclusive control and to remain there until sent elsewhere by his order, notwithstanding provisions allowing them to be loaded on cars by the purchaser instead of being delivered in the sheds, and for terms of payment for those delivered on the cars differing from those delivered in the sheds. Diehl v. McCormick, 143 Pa. 584; Clapp v. Peck, 55 Iowa, 270. So the delivery of the goods into the buyer's warehouse after his bankruptcy, or an actual possession of them taken by his trustee will put an end to the transit. Ellis v. Hurt, 3 T. R. 467; Took v. Hollingworth, 5 T. R. 226; Scott v. Pettit, 3 B. & P. 469; Inglis v. Usherwood, 1 East, 515. Where iron was purchased by a firm in Boston from the Brooke Iron Co., in Pennsylvania, to be delivered at

Elizabethport, N. J., and, on its arrival at Elizabethport was received by the vendee's agent and forwarded to him at Boston, and the vendor attempted to stop the iron at Boston, it was held that the transit ended on the delivery to the vendee's agent at Elizabethport. Brooke Iron Co. v. O'Brien, 135 Mass. 446.

Right of Stoppage Defeated by Transfer of Bill of Lading.—A vendor's right of stoppage *in transitu* is defeated by the transfer by the consignee of the bill of lading. Missouri P. R. Co. v. Heidenheimer, 82 Tex. 195; Sheppard v. Newhall, 54 Fed. Rep. 306. The right of stoppage *in transitu* is not affected by a transfer by the consignee of the bill of lading covering the goods, where such bill of lading is drawn to a third person or assigns, and not indorsed by such person. Sheppard v. Newhall, 54 Fed. Rep. 306. See Ocean Steamship Co. v. Ehrlich (Ga.), 14 S. E. Rep. 707. Four or five weeks after the arrival of goods at their destination, the consignee, who owed arrearages of charges upon other goods, verbally pledged the goods to the railroad company as security therefor. The goods at that time were in the company's warehouse, and under a stipulation of the bill of lading the company had a lien thereon for the arrearages. There was no change of possession, nor was there any new consideration for the agreement. Held, that no delivery had taken place which would defeat the seller's right of stoppage. Farrell v. Richmond, etc. R. Co., 102 N. Car. 390, 37 Am. & Eng. R. Cas. 704. And where by statute actual receipt of the goods was necessary to put an end to the right of stoppage, it was held that, although goods had reached their destination, and, by agreement between the railroad company and the consignee, had been set apart in the company's depot to be sold for the payment of arrearages of freight due the carrier, no delivery was effected by this agreement, and the right of stoppage still continued. Macon, etc. R. Co. v. Meador, 65 Ga. 705.

Goods Attached by Creditor.—An attachment or execution against the vendee does not preclude the exercise of the right of stoppage *in transitu*. Farrell v. Richmond & D. R. Co., 102 N. Car. 390, 3 L. R. A. 647, 9 S. E. Rep. 302. A creditor of the consignee, who has become insolvent, cannot pay the freight ostensibly as agent of the consignee, and have the goods removed to the consignee's store in order to be attached upon such creditor's debt. Harris v. Tenney (Tex.), 20 S. W. Rep. 82. See, also, Conture v. McKay, 6 Manitoba L. Rep. 273.

Goods Received by Mortgagees.—The right of stoppage *in transitu* is not lost where goods consigned are never received by the consignee, but are received by mortgagees who are in possession of his store when the goods arrive, although they have a mortgage covering after-acquired property and power to sell the goods under it, the mortgagees themselves becoming purchasers. Kingman v. Denison, 84 Mich. 608, 11 L. R. A. 347, 32 Cent. L. J. 362.

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JETSAM AND FLOTSAM.

JUDGMENT AGAINST ONE TORT-FEASOR NOT A BAR TO AN ACTION AGAINST THE OTHER.

In the case of Parmenter v. Barstow, 47 Atl. Rep. 1035 (1899), the plaintiff claimed damages for personal injuries caused by the negligence of the defendant's servants in cutting stone on the sidewalk, a piece of which struck her in the eye. The defendants pleaded a former judgment against Chace, a joint tort-feasor with the defendants, in the plaintiff's favor for the same cause of action which was claimed in this suit. The plaintiff demurred to this plea on the ground that the judgment against Chace did not bar a recovery in this action.

The demurrer was sustained by the Rhode Island Supreme Court. The grounds upon which the court based its decision are best stated by Stiness, J.: "The only two American cases which directly hold in favor of the bar of the former judgment are Hunt v. Bates, 7 R. I. 217 (1862) and Wilkes v. Jackson, 2 Hen. & M. (Va.) 355 (1808). The rule in this country is that joint tort feasors may be sued separately. Hunt v. Bates, and, indeed, the English cases only hold the contrary in cases of trover and trespass. As to other torts there is a practical unanimity. Virginia stands alone in holding the judgment to be a bar in all cases. This it did in Wilkes v. Jackson, which was an assault case. That case has been recently reviewed and affirmed in Petticolas v. City of Richmond, 95 Va. 456, 28 S. E. Rep. 566 (1897), which was trespass on the case for negligence. The court rests wholly on the ground of the English cases and acquiescence for nearly a century in Wilkes v. Jackson. The court further based its decision on the general rule and, sustaining the demurrer, concluded its opinion with the statement that a judgment against one joint tort-feasor did not bar an action against another joint tort-feasor.

The English rule, as laid down in one of the best and latest cases on the subject—Brinsmead v. Harrison, L. R. C. P. 547 (1872)—is that a judgment in an action against one of several joint tort-feasors is a bar to an action against the others for the same cause, although such judgment remains unsatisfied. See also Adams v. Ham, 5 U. C. Q. B. 292 (1849), and Sloan v. Creasor, 26 U. C. Q. B. 127 (1863).

This is also stated in the text books to be the English rule to-day. See Webb's Pollack on Torts, p. 231; Baylies' Addison on Torts (6th Ed.), p. 94; Cooley on Torts, *page 138; 2 Kent's Commentaries, 388, 389, and Underhill's Summary of the Law of Torts, p. 113, art. 35.

The American rule was first laid down by Chief Justice Kent. That rule, which, as stated by the eminent jurist, is generally followed in the United States, is that the party injured may bring separate suits against the wrongdoers and proceed to judgment in each case; and that no bar arises as to any of them until satisfaction is received.

This is admitted to be the general rule in the United States, as in the text books above cited and the cases to be cited, except in Virginia, as pointed out by Justice Stiness above.

Golding v. Hall, 9 Port. (Ala.) 169 (1839); Blann v. Cocheron, 20 Ala. 320 (1852); Morgan v. Chester, 4 Conn. 387 (1822), approved in Ayer v. Ashmead, 31 Conn. 447 (1863); Union, etc. Co. v. Sacklett, 19 Ill. App. 145 (1886); Fleming v. MacDonald, 50 Ind. 278 (1870); Turner v. Hitchcock, 20 Iowa, 310 (1866); United Soc. v. Underwood, 11 Bush (Ky.), 265 (1875), 21 Am. Rep. 214; White v. Phillbrick, 5 Me. 147 (1827); Aldrich v. Parnell, 147 Mass. 409 (1888); Kenyon v. Woodruff, 33 Mich. 310 (1876); Page v. Freeman, 19 Mo. 421 (1854); Lord v. Tiffany, 98 N. Y. 412 (1885); White v. Lathrop, 2 Ohio St. 33 (1825); Fox v. Northern Liberties, 3 W. & S. (Pa.) 103 (1841); Sanderson v. Caldwell, 2 Aik. (Vt.) 195 (1826); McGehee v. Shafer, 15 Tex. 198 (1855); Griffie v. McClung, 5 W. Va. 171 (1872).

In Tennessee it is agreed that a judgment against one joint wrongdoer is not of itself a bar to suits against

the others, but it is said that "the more reasonable doctrine on the other hand is, that as each of the wrongdoers is liable for his own act, separate actions may be brought at the same time or successfully, in each of which the plaintiff may proceed to judgment. But he can claim or enforce only one satisfaction." Christian v. Hoover, 6 Yerg. (Tenn.) 505 (1834).

The federal courts follow the general rule laid down by Chief Justice Kent. The first case on the point under discussion is Lovejoy v. Murray, 3 Wall. (U. S.) 1 (1865), wherein it is held that such a judgment (as the one spoken of in the case under discussion) against one joint tort feasor is no bar to an action against the other. "Nothing short of full satisfaction," said Miller, J., "or that which the law must consider as such can make such judgment a bar." This case has been followed in Sessions v. Johnson, 95 U. S. 347 (1877), and Birdsell v. Shaliol, 112 U. S. 485, 489 (1884).

It is to be regretted that in Parmenter v. Barstow nothing was said as to the satisfaction of the prior judgment against Chace. In England satisfaction was held to be not necessary in a judgment in trover, because title was held to have passed by the mere rendering of such judgment. This rule was extended, but wrongfully, as Kent shows, to all cases of tort.

We are of opinion, then, that the present case goes too far in holding that a judgment against one of two joint tort feasors does not bar recovery in an action against the other. The court should have inserted in its opinion the saving proviso in Lovejoy v. Murray, namely, that such judgment is a bar only where full satisfaction has been recovered.—*American Law Register.*

UNIFORM DIVORCE REGULATION.

Certain public questions may be said to not unremotely resemble the poor in that they are with us always. Among these are the divorce, death penalty, trust question, and a few others that we might mention were time and space available. Some day, we suppose, a few years immediately preceding the millennium, one or more of them will be definitely and finally disposed of one way or the other. At the present time, however, we confess that there are very slight hopes excited. The press, public speakers and lecturers, the bench and the bar have talked, written and thought upon this subject until the only wonder is that they had not talked, written and thought themselves all out of all interest in the matter long ago. As a beautiful and monumental relic of human inconsistency the present system of divorce laws is a shining success. In one State in the Union, the right to divorce for causes arising subsequent to marriage is not recognized at all; in another the legislature in their omnipotent wisdom have seen fit to provide (unless the statute has been changed very recently) that ten causes shall be sufficient, and then, for fear that by any possibility, something might have been omitted, they add, "or for any other cause which to the court may seem fit and proper." We read some time ago that under this latter clause a divorce was sought because a wife had informed her husband that in her estimation he was pretty close to being a fool. We do not remember whether the court considered this of sufficient gravity to warrant judicial interference, and as it was in a newspaper article, take it with some degree of suspicion. At the same time, however, it illustrates the extreme laxity with which the marriage tie may be regarded in certain sections of the community.

It has been said that New York is the easiest State in which to enter into marriage, while the hardest to get divorced in, and if an arrangement is ever to be reached for uniform legislation upon the present subject the State must relax something of its strictness. Personally, we are inclined to believe in a more liberal divorce law than that now existing there. It has been said, and with some show of justice, that one more strict in its nature than that generally in force throughout the United States will compel individuals to act carefully before they enter into marital engagements. While this may be true to a certain extent, yet some mistakes must inevitably occur, be the carefulness of both parties of the highest degree, and a more hideous injustice than keeping chained together two individuals who mutually detest each other can scarcely be imagined. It is a favorite remark of speakers upon the present subject that Roman degeneracy began with freedom of divorce, they being seemingly quite oblivious to the fact that the luxury introduced by Eastern conquest may perhaps be said to have been quite as influential a cause in the decline of the Empire.

This particular phase of the situation, however, belongs rather to the sociologist than to the legist. Looking at the matter from the standpoint of the latter and considering merely the means by which uniformity may be secured, it is not easy to see how the desired end can be accomplished unless by means of a commission to which each State shall appoint members, the result of whose deliberations will be embodied in legislation. Frankly, however, we consider this eminently eutopian. That other remedy, a national law necessitating as it inevitably would, an amendment to the constitution, seems far too impracticable.

The Commissioners on Uniform State Laws at their recent conference in Buffalo did, as a matter of fact, devote their entire attention to the present subject, and as a result of their deliberations presented the draft of an act to be recommended to all the States for adoption after being revised at the conference of next year.

The proposed law provides that no divorce shall be granted for any cause arising prior to the residence of either party in the State which was not ground for divorce in the State where the cause arose. It requires actual residence in the State for a year, with the intention of making it a permanent home, before the petitioner for a divorce can have any standing in court. When the cause for divorce arises outside of the State the petitioner must have been a resident of the State in good faith for two years before bringing suits. The defendant in the suit must be personally served, or if his or her whereabouts are unknown a reasonably diligent search must be continued for one year before notice by publication can be given. o judgment may be granted solely upon default, nor solely upon admissions by the pleadings, nor except upon trial before the court in open session. Either party may marry again, but in cases where notice has been given by publication only and the defendant has not appeared, the decree shall not become operative until six months after the trial and decision.

The statute is an improvement upon existing conditions. Its undoubted effect would be, as one writer states, to check "migratory divorce" as well as fraud and collusion. It is certainly advisable to permit the remarriage of both parties in view of the extreme facility with which decrees to the contrary may now be evaded. Could the laws have only been made uniform with respect to the causes for divorce the

advance upon existing conditions would have been more apparent. As affairs stand at present, it was certainly more tactful for the commissioners to avoid that particular phase of the situation just at present. On the whole, we can well wish for the adoption of the proposed act, trusting to future amendment to smooth over its irregularities.—*The American Lawyer.*

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMINISTRATION—Presumption as to Collection of Assets.—It being the duty of an administrator to promptly collect what was due his intestate, it will be presumed that he collected his intestate's share of an ancestor's estate, the money being on deposit in bank to the credit of the administrators of such estate, and therefore collectible.—BURBANK'S ADMX. V. DUNCAN, Ky., 53 S. W. Rep. 19.

2. BANKRUPTCY—Acts of Bankruptcy—Giving Preference.—Creditors filing a petition in involuntary bankruptcy against their debtor, alleging, as an act of bankruptcy, that he has transferred property with intent to give a preference, must assume the burden of proving the transfer of property, the debtor's intent to prefer a creditor, and his insolvency at the date of the transfer, except (as to the last requirement) when the respondent fails to produce his books and papers and submit to an examination, thereby incurring the obligation of proving his own solvency.—IN RE ROME PLANING MILL, U. S. D. C., N. D. (N. Y.), 96 Fed. Rep. 812.

3. BANKRUPTCY — Allowance of Claims — Preferred Creditor.—Under Bankruptcy Act 1898, § 57g, providing that the claims of creditors of a bankrupt who have received preferences shall not be allowed unless they surrender their preferences, a creditor who has actually received a preference cannot have his claim allowed without surrendering the preference, notwithstanding the fact that he had no knowledge or cause to believe that a preference was intended.—IN RE FT. WAYNE ELECTRIC CORP., U. S. D. C., D. (Ind.), 96 Fed. Rep. 803.

4. BANKRUPTCY — Commissions of Referee and Trustee—Dividend.—Under Bankruptcy Act 1898, §§ 40, 48, providing that referees and trustees in bankruptcy shall be entitled to receive commissions on "sums to be paid as dividends" by the estates administered by them, these officers are not entitled to commissions on disbursements made in payment of those creditors who are entitled, under the act, to priority of payment, and to full satisfaction, before distribution to general creditors begins, the sums paid to these preferred creditors not being "dividends," within the meaning of the law.—IN RE FIELDING, U. S. D. C., W. D. (Mo.), 96 Fed. Rep. 860.

5. BANKRUPTCY — Compositions — Construction of Statute.—The provisions of the bankruptcy act prescribing the requisites of a composition with creditors are to be strictly construed as against those who seek by this means to deprive non-assenting creditors of their right to have the debtor's property administered upon and distributed in the ordinary course of bankruptcy proceedings.—IN RE RIDER, U. S. D. C., N. D. (N. Y.), 96 Fed. Rep. 808.

6. BANKRUPTCY—Examinations—Competency—Wife of Bankrupt.—Where the law of the State provides that a wife shall not be examined as a witness for or against her husband without his consent, nor as to any communication made to her by him during the marriage relation, the wife of a bankrupt, under examination as a witness in the bankruptcy proceedings, cannot be required to disclose any communications made to her by her husband respecting his property or his income.—IN RE JEFFERSON, U. S. D. C., D. (Wash.), 96 Fed. Rep. 826.

7. BANKRUPTCY — Exemptions — Homestead.—Under Bankruptcy Act 1898, § 70, providing that a trustee in bankruptcy shall be vested with the title of the bankrupt to his property, except as to "property which is exempt," land acquired by the bankrupt under the United States homestead law cannot be subjected, in the bankruptcy proceedings, to the payment of any debt contracted by him before the issuance of the patent for such land, it being exempt as to all such debts by the terms of the homestead act (Rev. St. § 2296).—IN RE DAUBNER, U. S. D. C., D. (Oreg.), 96 Fed. Rep. 805.

8. BANKRUPTCY—Exemptions—"Wearing Apparel."—Where the State statute (Rev. St. Tex. art. 2397) exempts from execution all "wearing apparel" of the debtor, a bankrupt is entitled to claim as exempt a diamond stud, worth $250, habitually worn by him, during several years past, in the front of his shirt, and for the purpose of fastening the shirt together, when there are no circumstances connected with its acquisition or use tending to show fraud or bad faith towards his creditors.—IN RE SMITH, U. S. D. C., W. D. (Tex.), 96 Fed. Rep. 832.

9. BANKRUPTCY — Liens — Unrecorded Mortgage. — Where the law of the State provides that a mortgage of chattels shall not be valid, as against creditors of the mortgagor, if not recorded, or if it permits the mortgagor to retain, use and sell the property affected, a mortgage which is open to these objections will not create a lien entitling the mortgagee to the possession of the property as against the trustee in bankruptcy of the mortgagor, though it would have been good as against the bankrupt himself.—IN RE LEIGH, U. S. D. C., D. (Col.), 96 Fed. Rep. 806.

10. BANKRUPTCY— Proof of Claims — Review of Decision of Referee.—On the question of allowing or disallowing a claim offered for proof against the estate of a bankrupt, the referee in bankruptcy has a large measure of discretion; and his decision on a question of fact will not be reversed by the judge, unless manifestly contrary to the weight of the evidence.—IN RE RIDER, U. S. D. C., N. D. (N. Y.), 96 Fed. Rep. 811.

11. BANKRUPTCY — Rights of Secured Creditors.—A trustee in bankruptcy is vested by law with title to all the assets of the bankrupt, including securities in the hands of a creditor as collateral; and such creditor has no right to hold the securities until paid the amount of his debt, nor to sell or cancel them, or realize on them by the aid of a court or otherwise, independently of the bankruptcy proceedings, but he must surrender them to the trustee, who has sole authority to reduce them to money, and the claim of the creditor to priority of payment out of the proceeds will be adjudged and administered in the bank

ruptcy court, which alone has jurisdiction of the matter.—IN RE COBB, U. S. D. C., E. D. (N. C.), 96 Fed. Rep. 821.

12. BANKRUPTCY — Time for Appeal — Rehearing.—When the district court, in a controversy between a trustee in bankruptcy and a creditor of the estate, has rendered a decree on the merits adverse to the trustee, and the latter, without culpable neglect, has lost his right of appealing therefrom by the expiration of the time limited by Bankruptcy Act, § 25a, the district court may grant a rehearing, on his petition filed thereafter, for the purpose of reviving his right of appeal.—IN RE WRIGHT, U. S. D. C., D. (Mass.), 96 Fed. Rep. 820.

13. BENEFICIAL ASSOCIATIONS—Change of Beneficiary.—The rules of a beneficial association authorized a change of beneficiary on payment of a fee, filing an application with the local court, and surrendering the old certificate. The officers of such court were then required to certify and seal the application, and transmit it, with the old certificate, to the head office for approval. A member filled out an application for a change, paid the fee, and transmitted the application, without the old certificate, which was not then in his possession, to the local court, the officers of which properly authenticated the same, and it was received by the head office before the member's death. The original certificate was also subsequently sent to the head office, but was not received until after his death. Held a substantial compliance with the rules, and effectual to change the beneficiary.—MCGOWAN V. SUPREME COURT OF INDEPENDENT ORDER OF FORESTERS, Wis., 80 N. W. Rep. 603.

14. BILLS AND NOTES—Consideration.—In an action brought against one of the makers of a joint and several promissory note, he may interpose, to defeat recovery *pro tanto*, the defense that there was a partial failure of consideration, arising out of a breach of a contract of warranty, entered into with all of said makers, as to a part of the property for which the note was given.—NICHOLS & SHEPHERD CO. V. SODERQUIST, Minn., 80 N. W. Rep. 630.

15. BILLS AND NOTES—Genuineness of Signatures—Warranty.—One who in consideration of the surrender of a note indorsed by him, delivers to another a note purporting to be made by a third person, impliedly warrants that the signature thereto is genuine, though he does not in fact know at the time that it is a forgery.—LOWRY V. STAPP, Tenn., 53 S. W. Rep. 194.

16. BUILDING AND LOAN ASSOCIATION—Contract.—A contract evidenced by a certificate of shares in a building and loan association should be construed in connection with the by-laws and charter, and the articles of incorporation should be treated as a part of the contract, on the principle that a party becoming a member is chargeable with knowedge of its provisions.—MILLER V. EASTERN BUILDING & LOAN ASSN., Tenn., 53 S. W. Rep. 231.

17. CARRIERS—Freight Contracts.—It being within the apparent power of the agent to contract for delivery of a car at a certain place within a specified time, his contract therefor is binding on the company, the shipper not knowing of the limitation of his power.—STONER V. CHICAGO, G. W. RY. CO., Iowa, 80 N. W. Rep. 560.

18. CARRIERS—Injuries to Passengers—Overcrowding Street Car.—The exposure of a passenger to danger which the exercise of reasonable foresight would have anticipated, and due care have avoided, is negligence on the part of a carrier.—REEM V. ST. PAUL CITY RY. CO., Minn., 80 N. W. Rep. 638.

19. CARRIERS — Passenger — Ejectment. — Where a person boards a train at a place where the company does not receive passengers, and rides several miles, with the knowledge of the condutor, who does not eject him as a trespasser, and the conductor demands his fare for transportation, the latter has no right to eject him for non-payment of fare, where, before the conductor took any steps to eject him he produced money and offered to pay, as the conductor has elected to treat him as a passenger.—KANSAS CITY, P. & G. R. CO. V. HOLDEN, Ark., 53 S. W. Rep. 45.

20. CARRIERS—Passenger—Evidence.—Where one goes to a depot to take passage on the way car of a freight train, and, going to the place where passengers for that train are ordinarily received, enters the car, having a ticket, he becomes a passenger, and does not cease to be one where he leaves the car merely to avoid the collision of a train running into the rear of the car, and after getting out is injured by the collision.—GRADERT V. CHICAGO & N. W. RY. CO., Iowa, 80 N. W. Rep. 559.

21. CHATTEL MORTGAGES—Fraud.—A reservation in a chattel mortgage conveying goods to a trustee, to be sold for the benefit of mortgagor's creditors, that mortgagor might, by paying off debts and expenses, resume possession of goods unsold, does not invalidate the instrument, since the rights reserved are only such as the law gives.—PARLIN & ORENDORFF CO. V. HANSON, Tex., 53 S. W. Rep. 62.

22. CONSTITUTIONAL LAW—Extra Compensation—Officers.—Under Const. art. 2, § 25, providing that the legislature shall never grant extra compensation to a public officer after the service shall have been rendered, nor shall the compensation be increased or diminished during his term of office, a resolution of the legislature granting extra pay to its officers and clerks is void, where no services in addition to their regular duties were rendered, and where such resolution was not passed until the term of service was nearly completed.—STATE V. CHEETHAM, Wash., 58 Pac. Rep. 771.

23. CONTRACT—Bond.—A bond given to secure the performance of certain work for a municipality, conditioned to secure the performance of the contract, is the equivalent of one conditioned to secure the performance of the work contracted for.—CITY OF FT. MADISON V. MOORE, Iowa, 80 N. W. Rep. 527.

24. CONTRACT—Subscriptions—Corporations.—A subscriber to a building contract, payment under which was to be due at a certain time after completion of the building, is not entitled to demand before suit. It is his duty to find the creditor, and pay him.—DAVIS & RANKIN BLDG. & MFG. CO. V. CAIGLE, Tenn., 53 S. W. Rep. 240.

25. CORPORATIONS—Purchase of Stock.—A corporation attempting to avoid its contract for purchase of its stock on the ground of *ultra vires* has the burden of showing that its articles of incorporation did not authorize it.—WEST V. AVERILL GROCERY CO., Iowa, 80 N. W. Rep. 555.

26. CORPORATIONS—Service of Process.—Where it appeared by uncontradicted affidavit that the person on whom process was served as "manager" of defendant corporation was in fact only a bookkeeper, and that the company had a vice-president and general manager, the service was not good, though the return stated that "the president and chief officers" were absent from the county, there being no designation of the officers who were thus absent.—BEATTYVILLE COAL CO. V. BAMBERGER, BLOOM & CO.'S ASSIGNEE, Ky., 53 S. W. Rep. 31.

27. CRIMINAL LAW—Bigamy—Marriage.—Since marriage is a civil contract, in the absence of a statute declaring that marriages contracted in any other mode than that prescribed shall be void, marriages proved by cohabitation, general reputation, etc., are valid; and hence requested instructions, in a prosecution for bigamy, requiring defendant's former marriage to have been in conformity with the ceremonies prescribed by statute, were properly refused.—WALDROP V. STATE, Tex., 53 S. W. Rep. 130.

28. CRIMINAL LAW—Forgery—Another Offense.—In a prosecution for knowingly passing as true a forged check, an instruction that, if there was any evidence tending to show that defendant passed another forged check about the same time as the one declared on, they could consider such evidence only as bearing on

his intent in passing the check referred to in the indictment, is not erroneous.—WOLF v. STATE, Tex., 53 S. W. Rep. 108.

29. CRIMINAL LAW—Forgery—Previous Acquittal.—Under Pen. Code, art. 549a, making a "conviction" of forgery a bar to any other prosecution based on the same instrument, "acquittal" of a charge of forging a deed is no bar to a prosecution for uttering the same deed, where the indictment and plea in bar show distinct offenses, not susceptible of being proved as the same identical case.—PRESTON v. STATE, Tex., 53 S. W. Rep. 127.

30. CRIMINAL LAW—Former Conviction.—On an indictment for an affray in which a deadly weapon was used, where one of the accused pleads a former conviction of simple assault before a justice of the peace, and the evidence before the superior court, as before the justice, shows he used no deadly weapon and inflicted no serious injury, though the other defendant did, the plea should be sustained, since the same will not interfere with the punishment of the other defendant.—STATE v. FAGG, N. Car., 34 S. E. Rep. 198.

31. CRIMINAL LAW—New Trial—Misconduct of Jury.—Where, before a verdict had been reached, and while the jury were deliberating on the term of punishment, one of the jurors stated that accused was an ex-convict, and thereafter the jury agreed to a term of imprisonment greater than the minimum authorized, such statement is ground for a new trial, though two of the jurors made affidavits that they were not influenced by it.—HARDIMAN v. STATE, Tex., 53 S. W. Rep. 131.

32. DEATH BY WRONGFUL ACT—Limitation of Actions.—Shannon's Code, § 4025, provides that the right of action which a person who dies from the wrongful act of another would have had, had not death ensued, shall not abate by death, but shall pass to his widow, children, or personal representative. Section 4026 provides that the action may be brought by the deceased's personal representative, but, if he declines, it may be brought in his name by the widow and children without his consent. Section 4027 provides that the action may be brought by the widow in her own name, and, if there be no widow, by the children. Section 4029 provides that parties suing under sections 4025 and 4027 may recover for the deceased's suffering, loss of time, and necessary expenses, and also the consequent damage resulting to the parties suing. Code 1884, § 3469, provides that actions for injuries to the person shall be brought in one year after the cause accrues. Plaintiff, an infant, sued defendant for procuring the murder of her father and mother—the death of each being instantaneous with the fatal blow; the action being brought more than one year after the murder. Held, that the action was barred, since the limitations began to run from the time the injuries were inflicted, and as said sections create no new cause of action, but merely allow the survival of the actions of decedents.—WHALEY v. CATLETT, Tenn., 53 S. W. Rep. 131.

33. DEED—Evidence — Delivery.—The presumption that a deed is delivered on the date of execution is overcome, where the record clearly shows that deeds did not reach the grantees until after the date of grantor's death.—FURENES v. EIDE, Iowa, 80 N. W. Rep. 539.

34. DIVORCE—Grounds—Jurisdiction.—Under Code, § 3171, relating to divorces and giving jurisdiction thereof to the district court of the county in which either party resides, residence need not be for the length of time prescribed by Const. art. 2, § 1, to give the right to vote.—SYLVESTER v. SYLVESTER, Iowa, 80 N. W. Rep. 547.

35. EASEMENTS—Adverse Use of Passway.—The unexplained use of a passway for more than fifteen years establishes the right to its use; the presumption being that the user was as a matter of right, and not permissive merely.—BROWNING v. DAVIS, Ky., 53 S. W. Rep. 9.

36. EQUITY — Reformation of Release — Laches. — A court of equity will not refuse to reform a release in aid of an action at law for a personal injury on the ground of laches in commencing the suit, where a reasonable excuse is shown, and it does not appear that the delay will result in the loss of material evidence to the defendant in the action.—WABASH RY. CO. v. LUMLEY, U. S. C. C. of App., Sixth Circuit, 95 Fed. Rep. 773.

37. ESTOPPEL—Sale by Husband of Wife's Property.—A wife bought a team and made all the payments personally except one small deferred payment, which she intrusted her husband to pay. She permitted him to use the team, the earnings to be paid to her. During her ownership the wagon was traded once and one of the horses twice, and she was present at two of the trades, paying boot money herself, and she authorized the third trade, which was made in her absence. She spoke of the team as her own, and it was listed for taxation as her property. A year after the original purchase, the husband sold the team to defendants, and absconded. He told defendants that he owned the team and had made other similar statements, but his wife had no knowledge thereof. Held, that she did not allow her husband to appear as the true owner of the team, so as to estop her from denying his agency to sell the team, in view of the statutes enabling a wife to own separate property.—CAMPBELL v. FILLMORE, Colo., 58 Pac. Rep. 790.

38. EVIDENCE—Declarations.—In a suit by heirs to recover chattels alleged to have belonged to their deceased ancestor, the testimony of a third person that the ancestor had told him in his lifetime that he was controlling them as defendant's agent, and that they belonged to defendant, is admissible.—LEE v. JOHNSON, Tenn., 53 S. W. Rep. 183.

39. EVIDENCE—Intent to Defraud Creditors.—It is the duty of the court to direct a verdict, where a contrary verdict would have to be set aside as against the testimony. On an issue as to whether a transfer was intended to hinder, delay, or defraud creditors, parties to the transfer may be asked if it was made with that intent.—BROWN v. POTTER, Colo., 58 Pac. Rep. 785.

40. EXECUTION SALE—Vacating — Property Sold.—A judgment creditor who purchased land on an execution in his favor is not entitled to have the satisfaction of the judgment set aside, and a new execution issued where, after the sale and issuance of a sheriff's deed, he discovered that the judgment debtor did not have as great an interest in the tract sold as he thought, and where he was induced to believe that the debtor had a greater interest than he really had, partly by the representation of the debtor, and party by his own and other people's investigation, and it is not shown that the debtor knew that his representations were false when made.—POPPLETON v. BRYAN, Oreg., 58 Pac. Rep. 767.

41. FEDERAL OFFENSE.—While the criminal offenses against the United States are wholly statutory, and the indictments therefor must find their warrant in the provision of some statute, the fact that an act of congress creating an offense—such as the defacement or removal of revenue stamps or marks or brands—delegates to an administrative department of the government the duty of designing and preparing such stamps or prescribing such marks and brands, and making regulations governing their use, does not render their removal or defacement, when used in accordance with such regulations, any the less a statutory offense.—WILKINE v. UNITED STATES, U. S. C. C. of App., Third Circuit, 96 Fed. Rep. 837.

42. FIXTURES—Removal by Tenant.—Fixtures for a storeroom, made in sections, so that they can be removed, not intended by a tenant who put them in to become part of the room, and fastened so that they can be readily removed, are trade fixtures.—ROTH v. COLLINS, Iowa, 80 N. W. Rep. 543.

43. FRAUDS, STATUTE OF—Husband's Use of Wife's Property.—Under the statute of frauds, an oral agreement by a husband with his wife that, if she would

allow the proceeds of her separate property to be used to improve his property, he would give his property to her, is not sufficient to transfer the title of the husband's property.—PARRISH v. WILLIAMS, Tex., 53 S. W. Rep. 79.

44. FRAUDULENT CONVEYANCE—Husband and Wife.—A conveyance of real estate from a husband to his wife, prejudical to his creditors, cannot be sustained unless the relation between them of debtor and creditor is shown.—WOODS v. ALLEN, Iowa, 80 N. W. Rep. 540.

45. HOMESTEAD—Conveyance in Trust to Wife and Children.—A deed of a homestead by a husband in trust for his wife and children, providing for an ultimate division of the land and its proceeds amongst the survivors, is void without the signature of the wife, and the children can take no title thereunder.—SIRR v. MILLER, Mich., 80 N. W. Rep. 580.

46. HOMESTEAD—Vendor's Lien.—The general rule is that a vendor of real estate has an equitable right to a lien thereon to secure unpaid purchase money, though such right is not an interest in the land, but the mere capacity to acquire an interest through the interposition of a court of equity.—BERGER v. BERGER, Wis., 80 N. W. Rep. 585.

47. INJUNCTION—Right to Office.—Suit by a school district to enjoin defendants from occupying a school house and teaching therein will not lie, the vital and underlying question being whether one of the defendants was entitled to hold the office of subdirector and to discharge the duties thereof, as claimed by him, by virtue of an appointment, the remedy at law being adequate.—DISTRICT TP. OF GROVE v. MYLES, Iowa, 80 N. W. Rep. 544.

48. INTOXICATING LIQUORS—Local Option—Penalties.—An affirmative vote upon the question as to whether the local option law shall become inoperative in a town in which it has been in force does not operate as an entire repeal of the law, and so the penalty may thereafter be imposed for violations of the law which occurred while it was in force.—COMMONWEALTH v. OVERBY, Ky., 53 S. W. Rep. 36.

49. JUDGMENT—Garnishment—Filing Interrogatories.—Under Sand. & H. Dig. § 3508, authorizing garnishment on a judgment, without making it a condition that plaintiff shall file allegations and interrogatories, the service of the garnishment creates a lien, and gives the court jurisdiction, though such allegations and interrogatories were not filed, and though Act April 8, 1889, requires such filing in all garnishments.—LITTLE ROCK TRACTION & ELECTRIC CO. v. WILSON, Ark., 53 S. W. Rep. 43.

50. LANDLORD AND TENANT—Disturbance of Tenant's Possession.—In a suit to enjoin defendant from interfering with complainant's possession of a tract of land, it appears that complainant and defendant rented a farm, which included the tract of land in question, by a parol lease, from year to year; that by agreement between them complainant was given possession of the tract in controversy; that the owner of the land, prior to the beginning of the year for which complainant was then in possession, gave him notice to vacate and rented the tract to defendant, with permission to build thereon. Held, that complainant was not entitled to relief beyond the year for which he was then in possession.—BOYD v. MUSTIN, Tenn., 53 S. W. Rep. 225.

51. LIBEL—Charging Crime—Privileged Communications.—Plaintiff, in a newspaper publication, accused defendant of corruption in office, in reply to which defendant undertook to show that plaintiff was an impostor, and had no interest in the public welfare, by reciting numerous crimes and acts of which he charged that he was guilty. Held, that, in an action for libel, defendant could not claim that his publication was privileged, as made in self-defense, since it was not in answer to, nor necessary to, his defense.—BREWER v. CHASE, Mich., 80 N. W. Rep. 576.

52. LIFE INSURANCE—Assignment of Policy—Beneficiary.—An intestate had taken out a policy of insurance made payable to his administrator or executor. He immediately delivered it to his mother, to whom he owed a large sum of money, saying it was for her benefit, and that it was by oversight she was not named as the beneficiary. His mother held the policy until his death. Held to constitute a valid assignment.—HANCOCK v. FIDELITY MUT. LIFE INS. CO., Tenn., 53 S. W. Rep. 181.

53. LIFE INSURANCE—Termination of Contract.—Where the holder of a life insurance policy in a mutual company refused to pay a mortuary call, and announced to the company that he had "quit" on account of dissatisfaction with an increase in the rate of assessments, such action terminated the contract, and there can be no recovery on the policy on his subsequent death, regardless of the question of the legality of the company's action in increasing the rate of assessment.—RYAN v. MUTUAL RESERVE FUND LIFE ASSN., U. S. C. C., N. D. (Iowa), 96 Fed. Rep. 796.

54. LIMITATION OF ACTIONS—Exception of Married Women from Statute.—Ky. St. § 2525, excepting married women from the operation of limitations, applies, though the plaintiff might, under Civ. Code Prac. § 34, have sued alone during coverture, if her husband refused to unite in the action.—ONIONS v. COVINGTON & C. ELEVATED RAILWAY, TRANSFER & BRIDGE CO., Ky., 53 S. W. Rep. 8.

55. MASTER AND SERVANT—Negligence—Assumption of Risk.—Where the decedent performed work to which he was unaccustomed, and which could not be said, as a matter of law, to require no more than ordinary skill, it cannot be assumed that he knew the implements furnished him were inferior, and the word dangerous, and waived his right to any damage for injury.—ANDERSON v. ILLINOIS CENT. RY. CO., Iowa, 80 N. W. Rep. 561.

56. MASTER AND SERVANT—Negligence—Defective Appliance.—Where the plaintiff, a railway fireman, had his attention called to the loose condition of a step, on the engine, and noticed several different times thereafter that it was loose, and each time he refixed it without reporting it to the foreman, and was told by the engineer to remove the step, but failed to do so, and on the same day, in attempting to use the step, was injured, he was guilty of contributory negligence.—KERRIGAN v. CHICAGO, M. & ST. P. RY. CO., Wis., 80 N. W. Rep. 586.

57. MASTER AND SERVANT—Injury to Third Person—Acts of Servant.—Where a motorman, to frighten away boys who had placed obstructions on the company's tracks, threw a stone near where he saw the boys in hiding, striking one of them, he was not acting within the scope of his employment, so as to render the company liable for the resulting injury, although it had previously instructed him that the boys were in the habit of placing obstructions on the track, and that he should use special diligence to prevent the mischief. The test applied in determining whether the master is liable for the act of his servant is not the character of the act, but whether it was done within the scope of the servant's duty.—DOLAN v. HUBINGER, Iowa, 80 N. W. Rep. 514.

58. MUNICIPAL CORPORATIONS—Construction of Waterworks.—Where several defendants are officers of a municipality, and the acts complained of where done under color and in excess of their authority, whereby the municipality as well as the plaintiff suffered loss, the recovery may be against them both as individuals and in their official capacity, though they were sued only as officers.—MOCK v. CITY OF SANTA ROSA, Cal., 58 Pac. Rep. 826.

59. MUNICIPAL CORPORATIONS—Contracts—Constitutional Law.—A franchise granting a private corporation the right for a limited period to operate a water system is not a contract, the obligation of which is impaired by the city afterwards establishing a competing system.—NORTH SPRINGS WATER CO. v. CITY OF TACOMA, Wash, 58 Pac. Rep. 773.

60. MUNICIPAL CORPORATIONS—Ice and Snow.—A city is responsible for injuries suffered by one who falls on a walk because of the rough surface of the snow and ice, which it has had an opportunity to remove, though it was made more dangerous by a recent fall of sleet, provided the injury would not have been sustained but for the uneven condition.—HODGES v. CITY OF WATERLOO, Iowa, 80 N. W. Rep. 523.

61. MUNICIPAL CORPORATIONS—License Tax Upon Attorneys.—Const. § 181, empowering municipal corporations to impose "license fee" on occupations and professions, authorizes a license tax on lawyers for the purpose of raising revenue.—BAKER v. CITY OF LEXINGTON, Ky., 53 S. W. Rep. 16.

62. MUNICIPAL CORPORATIONS—Paving Assessments—Validity of Contract.—There is nothing in the law to prevent a city, whose finances will admit of so doing, from paying for the cost of paving a street from its general fund; and it may lawfully contract to pay the cost of such improvement in front of property so nearly valueless as to render an assessment thereon unavailing without affecting the validity of assessments against abutting property for other portions of the work.—OTTUMWA BRICK & CONSTRUCTION CO. v. AINLEY, Iowa, 80 N. W. Rep. 510.

63. MUNICIPAL CORPORATIONS—Street Assessments.—Under Ky. St. § 2838, a copy of the ordinance authorizing a street improvement, a copy of the contract therefor, and a copy of the apportionment, each duly attested, are *prima facie* evidence, in an action to enforce a lien for the cost of the improvement, that the grade of the street had been established as required by law.—CALDWELL v. CORNELL, Ky., 53 S. W. Rep. 35.

64. NATIONAL BANKS—Distribution of Assets in Insolvency.—Where a number of the shareholders of a national bank in good faith paid an assessment made to comply with a requirement of the comptroller to make good an impairment of the bank's capital, although such assessment was invalid because made by the directors instead of by the stockholders, on the insolvency of the bank, and the winding up of its affairs by a receiver, after outside creditors are paid, such paying shareholders are entitled to be treated as creditors as against the non-paying shareholders, and repaid the amounts so paid, before general distribution of the remaining assets among all the shareholders.—IN RE HULITT, U. S. C. C., S. D. (Ohio), 96 Fed. Rep. 785.

65. NATIONAL BANKS—Offenses of Officers—Indictment.—Where an officer of a national bank is charged with several offenses under Rev. St. § 5209, in making at different times false entries in the books, reports, or statements of the association, such offenses may be charged in different counts of the same indictment, as provided in Rev. St. § 1024, as "acts or transactions of the same class of crimes or offenses."—UNITED STATES v. BERRY, U. S. D. C., W. D. (Va.), 96 Fed. Rep. 842.

66. NUISANCE—Obstruction in Street—Liability for Personal Injury.—A receiver of a water company cannot be held liable in damages for a personal injury received by a person in tripping and falling over the top of a stop box which projected above the surface of the ground on the part of a street used for sidewalk purposes, where the box when constructed was placed flush with the surface of the sidewalk, as required by a city ordinance, and its projection was caused by the removal of the sidewalk from around it by someone other than the water company or its receiver.—MAHONEY v. CITY OF HELENA, U. S. C. C., D. (Mont.), 96 Fed. Rep. 790.

67. PARTNERSHIP—Construction of Contract.—Where plaintiff and defendant formed a partnership for the purpose of handling a certain crop of whisky to be made at plaintiff's distillery, the contract stipulating that plaintiff was to "furnish all warehousing of said crop," and was "to receive all storage for his own account," plaintiff cannot charge storage for the partnership whisky while it was owned by the firm.—EDELEN v. WALKER, Ky., 53 S. W. Rep. 38.

68. PARTNERSHIP—Liability for Loan Made to Partner—A partner is not liable for a loan made to his co-partner before the firm was formed, where the money was put into the firm as the individual property of the borrower, without any knowledge on the part of the partner as to the source from which it came, and the debt was never assumed by the firm, though the borrower may have told the lender that the firm to be formed would assume its payment.—BROOKS-WATERFIELD CO. v. CARPENTER, Ky., 53 S. W. Rep. 40.

69. PARTNERSHIP—Loan of Money.—A person contributed a certain sum to the common stock of a business, and was to have no further liability, nor care in the business, nor share in the profits, but was to have a per cent. on the sum invested, payable annually and in any event. His money was to be kept in the business, and not used for any other purpose, and the stock was to be kept up to secure it. At the end of the time limited, he was to receive his money back, or its value in goods. Held, that this amounted to a loan, and not to a limited partnership.—RICHARDSON v. CARLTON, Iowa, 80 N. W. Rep. 582.

70. PARTNERSHIP—Power to Bind Firm.—A partner had no power to bind his co-partner in the mercantile business by a note executed for advances made to buy tobacco to be shipped to the payee for sale on commission; the purchase of tobacco for that purpose not being within the apparent scope of the business of the firm.—BROOKS-WATERFIELD CO. v. JACKSON, Ky., 53 S. W. Rep. 41.

71. PLEDGES—Collateral Security—Duty of Pledgee. A bank held several notes as collateral security for a note given it by a second bank, which afterwards failed and the maker of one of the pledged notes immediately conveyed his property to a *bona fide* creditor, and the pledgee then surrendered this maker's note and took in exchange therefor a note for an equal sum from the cashier of the insolvent bank, it appearing that such note was of more value than the one surrendered. It afterwards transpired that the cashier's note could not be collected, while the note exchanged therefor was paid in full. Held, there was no negligence by the holder as against other creditors of the insolvent bank, and it could not be charged with having received payment of the note surrendered.—HANOVER NAT. BANK v. BROWN, Tenn., 53 S. W. Rep. 206.

72. PRINCIPAL AND AGENT—Ratification.—A gave his note, secured by mortgage, payable at any time, at office of K, which was indorsed to K, and then by K to B. Though K had no express authority to receive payment, it assumed that it had, and received in payment of the note money which it had loaned A. It did not turn over the money to B, but becoming financially embarrassed, executed a trust deed to secure various creditors, naming B as beneficiary to the amount of such note and a debt owing B from it. B, with knowledge of all the facts, concluded to accept the benefit of the deed, and took part in suit to enforce it; but it was adjudged void, as a general assignment with preferences. Held, that B ratified the acceptance of the money by K from A, and was bound by its election of remedy.—KEENE FIVE CENT SAV. BANK v. ARCHER, Iowa, 80 N. W. Rep. 505.

73. PRINCIPAL AND AGENT—Unauthorized Contract—Ratification.—Where an agent without authority received money from a son in payment of his father's indebtedness to the principal, under an agreement that the son should succeed his father in the principal's employ, the principal, on learning the condition on which payment was made, is not entitled to retain the money without performing the condition.—CASADY v. MANCHESTER FIRE INS. CO., Iowa, 80 N. W. Rep. 521.

74. PRINCIPAL AND AGENT—Undisclosed Agency—Action—Election.—Where, after an action for goods sold and delivered had been commenced against an undisclosed agent, the fact of agency was discovered, the commencement of the action does not constitute an election to charge the agent, so as to preclude an action against the principal.—STEELE-SMITH GROCERY CO. v. POTTHAST, Iowa, 80 N. W. Rep. 517.

75. RAILROAD COMPANY—Contract of Guaranty.—It is within the powers of a railroad company to become guarantor of a contract made by a construction company for the serivces of an engineer to be rendered in the construction of its road, and it is not relieved from liability by a subsequent change in its plans by which the services are not required.—MATHESIUS v. BROOKLYN HEIGHTS R. CO., U. S. C. C., E. D. (N. Y.), 96 Fed. Rep. 792.

76. RELEASES—Discharge of Joint Obligor.—Where joint debtors agree to each pay one-half of the debt, the creditor, with knowledge of the agreement, by accepting one-half from one of them, and releasing him, does not release the other, as the common law rule that a release of one joint obligor releases the other does not apply.—HAMILTON v. RITCHIE, Tenn., 53 S. W. Rep. 198.

77. REMOVAL OF CAUSES—Jurisdiction of Parties—Residence.—A defendant may waive the provision of the judiciary act (25 Stat. ch. 866, § 1) which entitles him to be sued in the district of his residence; and where he is sued in a court of a State in which neither he nor the plaintiff resides, and removes the cause to the circuit court of the United States in such district, the plaintiff, having elected to institute the suit in such State court, cannot object to such removal on the ground that defendant is not a citizen or resident of the district, and that, therefore, the court would not have had original jurisdiction of the suit.—COWELL v. CITY WATER-SUPPLY CO., U. S. C. C., S. D. (Iowa), 96 Fed. Rep. 769.

78. REPLEVIN—Fraudulent Conveyances—Evidence.—In replevin, where there is uncontroverted evidence of complainant's ownership of the property, an allegation that the transfer to him was made fraudulently to enable his vendor to defraud creditors is not sustained by showing that the sale was on credit, and no lien was reserved by the vendor.—HARPER v. TRENT, Tenn., 53 S. W. Rep. 245.

79. RES JUDICATA—Privies—Sale.—The doctrine of *res adjudicata* extends to and binds privies of the parties to the litigation as well as the parties themselves, but privity, under such rule, exists only in relation to the subject-matter of such litigation. The decision in an action becomes a rule of property as to the subject-matter thereof and passes with it to all persons subsequently claiming under such parties, but does not attach to any other property, the limit of its effect as to privies being the limit of the particular property, property right, subject-matter, or thing, involved in the litigation.—HART v. MOULTON, Wis., 80 N. W. Rep. 599.

80. STATUTES—Enactment—Evidence.—The enrolled bill, authenticated by the proper officers of the houses, approved by the governor, and filed with the secretary of state, and the journals of the houses, are the official records of the proceedings of the legislature relative to the exactment of the law, and are the only competent evidence in a controversy in regard to the due passage of the bill, or in respect to alleged material errors in its substance.—STATE v. ABBOTT, Neb., 80 N. W. Rep. 449.

81. TAXATION—Sale—Notice—Jurisdiction.—Where land is assessed to one, but, before filing of the auditor general's petition, it is conveyed to a resident of another county, and no subpœna is served on the first owner, and the one issued as to the second in the county in which the land lies is not served, nor transmitted to the county of his residence, the court obtains no jurisdiction to sell the lands for taxes on a service by publication.—COYLE v. O'CONNOR, Mich., 80 N. W. Rep. 572.

82. TELEGRAPH COMPANY—Delay in Delivering Message—Damages.—One in need of medical aid can recover from a telegraph company for the pain and suffering which he sustained by reason of its negligent delay in delivering a message calling for such aid, and which he would not have suffered but for the delay in the arrival of the surgeon, occasioned by its delay in delivering the message.—WESTERN UNION TEL. CO. v. MCCALL, Kan., 58 Pac. Rep. 797.

83. TRUSTS—Limitations.—Where plaintiff made her brother her agent to sell property, and to collect the purchase money, and keep it at interest for her, a continuing trust was created, and limitations did not run against plaintiff's claim.—CALDWELL'S ADMR. v. HAMPTON, Ky., 53 S. W. Rep. 14.

84. USURY—Stipulation.—A note calling for the highest legal rate of interest, and with a stipulation for exchange, is not usurious, where it appears that the payee is not a resident of the place where the note was made, and there is nothing to show that the stipulation was made to avoid usury laws.—STUART v. TENNISON BROS. SADDLERY CO., Tex., 53 S. W. Rep. 83.

85. VENDOR AND PURCHASER—Failure of Title—Recovery of Purchase Price.—Where the purchaser of land with warranty in fee obtains a decree for the return of the purchase money for breach of the warranty, but fails to deliver possession to the vendor, who recovers a decree for rents, she is not only entitled to rents up to the time of the decree in the purchaser's suit, but to the time of the master's report in the accounting.—BRANNON v. CURTIS, Tenn., 53 S. W. Rep. 234.

86. VENDOR AND PURCHASER—Judgment—Lis Pendens.—Where one purchases land after a judgment of the supreme court affecting it, and before expiration of the time for application for rehearing, he takes subject to the further review by the rehearing.—BIRD v. GILLIAM, N. Car., 34 S. E. Rep. 196.

87. VENDOR AND PURCHASER—Land Contract and Deed.—Where a contract for the conveyance of certain described property, and a deed executed in accordance therewith, covered more property than the vendor owned, and the evidence showed that both vendor and purchasers when making the contract had in contemplation only that property which the vendor actually owned, the mistake in description being mutual, the contract and deed will be reformed to include only that property which the vendor had a right to convey.—JORDAN v. WALTERS, Iowa, 80 N. W. Rep. 530.

88. VENDOR AND PURCHASER—Parol Sale.—Payment of the purchase money, the erection of valuable improvements, and possession must all concur to pass title by a parol sale.—POLK v. KYSER, Tex., 53 S. W. Rep. 87.

89. VENDOR AND PURCHASER—Vendor's Coverture.—A purchaser who has not been disturbed in his possession cannot have a rescission on the ground that the contract was void by reason of the vendor's coverture, of which he had knowledge at the time of the sale and the execution of the deed, provided the vendor is discovert when payment of the residue of the purchase money is sought to be enforced, and a new and sufficient deed is then tendered, especially where the parties cannot be placed *in statu quo*.—HOLMES v. HOLMES, Ky., 53 S. W. Rep. 29.

90. WILLS—Devise in Fee—Precatory Words.—A devise was of all testator's property, unconditionally, to his widow, with full power, as executrix, to sell and convey, followed by directions to divide the property remaining at her death among his children, and, in case she remarried, two-thirds of the property then remaining to be divided among his children. Held, that the widow took a fee under the first clause, and the subsequent directions must be treated as precatory.—HAMBEL v. HAMBEL, Iowa, 80 N. W. Rep. 528.

91. WILLS—Holographic Will—Execution.—Under R. St. art. 5335, requiring that every will in writing shall be "signed by the testator, and shall, if not wholly written by himself, be attested by two or more credible witnesses," etc., a will entirely in the testator's handwriting, commencing, "Be it known that I, D, do, of my own choice, and in my own handwriting, make this, my last will," etc., but not otherwise signed or subscribed, is sufficiently executed.—LAWSON v. DAWSON'S ESTATE, Tex., 53 S. W. Rep. 64.